
POLITICAL UNION “FREE GEORGIA”
V. THE PARLIAMENT OF GEORGIA

N1/3/538

Batumi, June 24, 2014

Composition of the Board:

Konstantine Vardzelashvili – Chairman of the Hearing, Judge Rapporteur;
Ketevan Eremadze – Member;
Maia Kopaleishvili – Member.

Secretary of the Hearing:

Lili Skhirtladze

Title of the Case:

Political Union “Free Georgia” V. the Parliament of Georgia

Subject of the Dispute:

Constitutionality of subparagraph “b” of paragraph 2 of Article 11 of the law of Georgia “On Assemblies and Demonstrations” With respect to paragraph 1 of article 25 of the Constitution of Georgia and constitutionality of the subparagraph 6 of article 13 of the same law with respect to paragraph 1 and 3 of article 25 of the constitution of Georgia.

Participants of the Hearing:

Representative of the Claimant - Ramin Papidze; Representative of the Parliament of Georgia - Tamar Meskhia.

I

Descriptive Part

1. On July 27, 2012 a constitutional claim (registration N538) was lodged to the Constitutional Court of Georgia by the Political Union “Free Georgia”. On August 1, 2012 N538 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. Pursuant to the recording notice N1/3/538 of the first board of the Constitutional Court the claim was admitted for consideration on merits in the part disputing constitutionality of subparagraph “b” of paragraph 2 of Article 11 of the law of Georgia “On Assemblies and Demonstrations” with respect to paragraph 1 of article 25 of the Constitution of Georgia and constitutionality of subparagraph 6 of article 13 of the same law with respect to paragraph 1 and 3 of article 25 of the Constitution of Georgia.

2. The oral hearing on merits was held on September 20, 2013 by the first Board of the Constitutional Court.

3. The legal basis for submission of the constitutional claim is: subparagraph “f” of paragraph 1 of article 89 of the Constitution of Georgia, subparagraph “e” of paragraph 1 of article 19 and paragraph 1 of article 39 of the organic law of Georgia “On the Constitutional Court of Georgia”, article 15 and 16 of the Law of Georgia “On Constitutional legal proceeding”

4. According to subparagraph “b” of paragraph 2 of Article 11 of the law of Georgia “On Assemblies and Demonstrations” the participants of assembly or demonstration are prohibited “to carry such items or substances that are or may be used to injure the life and health of participants of the assembly or demonstration, or other persons”. At the same time paragraph 6 of article 13 of the same law establishes that if organiser did not fulfil its obligation defined in paragraph 2 and 3 of the same article or if he/she has fulfilled obligation but still failed to eliminate the violation in a reasonable period of time, law enforcement agencies will use measures established under international law and legislation of Georgia law to eliminate violations, unblock the traffic roadway and/or restore traffic.

5. According to subparagraph 1 of article 25 of the Constitution of Georgia “everyone, except those within the composition of military forces and the Ministry for Internal Affairs, shall have the right to public assembly without arms, either indoors or outdoors, without prior permission”. Paragraph 3 of the same article establishes that “State authority may terminate a public assembly or a manifestation only if it assumes unlawful character.”

6. The Claimant submits that based on subparagraph “b” of paragraph 2 of Article 11 of the law of Georgia “On Assemblies and Demonstrations” law enforcement agencies can set additional prohibitions; therefore this disputed provision infringes Constitutional right to peaceful assembly and demonstration. The Claimant states that based on the disputed provision items such as for example flag can be prohibited, since, because of the flagstaff, it may be considered as an item which can be used to injure health of participants. Applicant claims that if government intended to prevent possible incident during assembly and demonstration it could have created more clear and explicit definition of items carrying of which is prohibited by participants of assembly.

7. During the hearing on merits the Claimant additionally indicated that disputed legal provision shall be more foreseeable and clearly formulated by the lawmaker. It is not possible to create complete list of items which may be used to injure the life and health of participants of the assembly or demonstration, since any item which has material state may be used for such purpose.

8. The Claimant further states that disputed legal provision would still be unconstitutional even if it contained complete list of items or substances carrying of which are prohibited during assembly and demonstration, because it prohibits items or substances itself which may be used to injure the life and health of participants and does not take into consideration whether such item and substance was actually used by participant for the mentioned purpose. The Claimant considers that the prohibition established by disputed provision can

cover finger nail scissors and nail buffers, which were found in participant's hand bag and were not intended to be used for harming participant health or life, but mentioned items could be considered possibly usable for that purpose.

9. The Claimant defined that illegal use of any item or substance by the participant of assembly or demonstration, for the purpose of harming health and life of others is punishable by other laws of Georgia. Therefore there is no need for disputed regulation, which gives law enforcing agencies unreasonably wide margin of interpretation and breaches the right guaranteed under paragraph 1 of article 25 of the Constitution of Georgia.

10. The Claimant also considers that subparagraph 6 of article 13 of the Law of Georgia "On Assemblies and Demonstrations" violates article 25 of the Constitution of Georgia. The Claimant considers that based on this disputed legal provision assembly might be terminated if organiser fails to eliminate the violations of law committed by several individuals. The Claimant states that lawmaker could reach legitimate aim by creating the provision, which obliges law enforcing agencies to take measures against individual offenders and allow assembly or/and demonstration to continue after violations are eliminated.

11. The Claimant states that organiser should not be responsible on elimination of occasional violations during assembly and demonstration. Organiser is responsible on not to allow assembly and demonstration to assume unlawful character, but law enforcement authorities should be responsible to eliminate violation committed by individual participant. Violation of the law committed by individual participant should not interrupt regular proceeding of an assembly.

12. During the hearing on merits the Claimant stated that article 25 of the Constitution of Georgia creates both negative and positive obligations of the state. Positive obligation includes ensuring the uninterrupted proceeding of assembly and demonstration. Contrary to this obligation disputed legal provision creates requirement on organiser to eliminate violations during assembly and demonstration.

13. According to the Claimant's statement it is not possible for the organiser to eliminate occasional violations committed by each individual during demonstration with several thousand participants. In such cases duty to eliminate the violations should be on law enforcing agencies.

14. According to the opinion of the representative of the Claimant, disputed legal provision includes high risk of arbitrary use, since it makes possible right to assembly of peaceful demonstrator to be restricted as a result of offences committed by certain individuals. In cases when organiser could not remedy the violation in reasonable time, the legislation empowers law enforcing agencies to terminate or restrict proceeding of assembly and demonstration. The Claimant party considers justifiable and acceptable to create duty on organiser to request termination of violation from a participant, but it is unconstitutional to oblige him/her to eliminate it. Therefore, the Claimant considers that the disputed provision contradicts paragraph 1 and 3 of article 25 of Constitution of Georgia.

15. According to the position of the Respondent, subparagraph “b” of paragraph 2 of Article 11 of the law of Georgia “On Assemblies and Demonstrations” defines the items, carrying of which is prohibited by participants of assembly and demonstration. Therefore, disputed provision creates certain boundaries on the rights of participants of assembly and demonstration, which can be considered as interference in the right guaranteed by paragraph 1 of article 25 of the Constitution of Georgia. The Respondent claimed that mentioned interference intends to achieve legitimate public aims enshrined in the paragraph 4 of article 24 of the Constitution of Georgia.

16. The Respondent party stated that the disputed provision should not be regarded separately from other related legal provisions. The Respondent stated that according to paragraph 3 of Article 2 of the law of Georgia “On Assemblies and Demonstrations” the restriction of right prescribed by this law should be: aimed to safeguard constitutional values protected under paragraph 4 of article 24 of the constitution, prescribed by law, necessary in the democratic society, non-discriminatory and proportional.

17. According to the statement of the representative of the Parliament of Georgia, as a result of systemic interpretation of the disputed provision in light of the mentioned article, it can be considered that an employee of law enforcing agency is authorised to prohibit carrying items or substances that are or may be used to injure the life and health of others by participants of an assembly or demonstration only in cases, when real danger exist that the items or substances will be used to harm others, even though generally such items are not used for that purpose; furthermore, mentioned prohibition shall be necessary for reaching legitimate aims listed in paragraph 4 of article 24 of the Constitution.

18. According to the statement of the representative of the Respondent, it will be ineffective to withdraw the disputed provision and create complete list of prohibited items and substances, because the list might not cover every item, which can be used to injure life and health of people. Therefore, declaring the disputed provision unconstitutional will decrease ability of law enforcement agencies to provide order and security.

19. Furthermore, the Respondent declared that based on the principle of legal certainty law should be sufficiently clear, so every individual, whose rights are restricted could reasonably foresee possible results of his/her actions. Based on mentioned principle it would be better if law explicitly prohibited carrying such items and substances during demonstration, which create real and eminent danger towards life, health and property of participant of assembly and demonstration and other people. Although the Respondent considered existing formulation of the disputed provision to be constitutional, she stated, that the Parliament of Georgia will reformulate disputed provision based on principle of legal certainty and judgment of the Constitutional Court.

20. Representative of the Respondent declared that paragraph 6 of article 13 of the Law of Georgia “On Assemblies and Demonstrations” does not establish

legal ground for termination of assembly and demonstration. Therefore Claimant's argument, according to which if organiser did not fulfil its obligations defined by disputed provision, or if he/she has fulfilled the obligations but still failed to eliminate the violation, assembly might be terminated, is not true.

21. According to the statement of the Respondent, legal Ground for termination of assembly and demonstration are listed in paragraph 1 of Article 13 of the law of Georgia "On Assemblies and Demonstrations". Based on the disputed provision law enforcing agencies are entitled to use measures established under the international law and legislation of Georgia to eliminate violations, unblock the traffic roadway and/or restore traffic, which does not include termination of Assembly and Demonstration. Furthermore, the disputed provision does not establish any form of legal liability of an organiser of assembly; it only defines possible actions, which can be taken by law enforcing agencies in case violations exist.

22. The Representative of the Parliament mentioned that the disputed provision refers to the measures established under the international law and legislation of Georgia. There is no provision in Georgian Legislation which establishes possibility to terminate Assembly and Demonstration in situations described by the disputed provision. With respect to the international law, it should be stated that according to the OSCE guidelines on freedom of assembly, when infrequent violation of the rules regulating preceding of assembly and manifestation occurs, representative of law enforcing agencies are obliged to isolate offender or group of offenders from other participants of the assembly and separate them from place of the assembly.

23. Representative of the Respondent indicated that the right protected by article 25 of the Constitution can be restricted if it is necessary in a democratic society in the interest of state security, territorial integrity and public safety. Restriction of the right by the disputed provision is in the interest of protecting rights of others and providing public safety. In addition, representative of law enforcing agencies are entitled to use only those measures, which are proportionate to the restricted right.

24. Based on above mentioned, the Respondent considers that paragraph 6 of Article 13 of the law of Georgia "On Assemblies and Demonstrations" is in conformity with paragraph 1 and 3 of article 25 of the Constitution of Georgia.

II

Reasoning Part

1. According to paragraph 1 of article 25 of the Constitution of Georgia "Everyone, except those within the composition of military forces and the Ministry for Internal Affairs, shall have the right to public assembly without arms, either indoors or outdoors, without prior permission". The Constitutional provision safeguards human right on peaceful, public assembly. It "gives a person enjoying the right opportunity to express his feelings and opinions (political,

social, artistic, religious, etc.). Assembly and manifestation can be indispensable element of political activities, can serve expression of ideals, reception and dissemination of information, etc.“ (The judgment №2/482,483,487,502 of the Constitutional Court of Georgia on the case of “Political Union of Citizens “Movement for Unified Georgia”, Political Union of Citizens “Conservative Party of Georgia”, Citizens of Georgia - Zviad Dzidziguri and Kakha Kukava, Georgian Young Lawyers’ Association, Citizens - Datchi Tsaguria and Jaba Jishkariani, Public Defender of Georgia v. the Parliament of Georgia”, April 18, 2011, II-4). Freedom of Expression is necessary and integral element for existence of democratic society. Protection of freedom of expression constitutes one of the most important tasks for democratic society. Therefore protection of the right to freedom of expression serves appreciation of individual interest and desires of each member of society; thus it determines quality of accountability and democracy of the state.

2. In democratic society wide consensus exists about special importance of protection of freedom of expression. Therefore each restriction imposed on freedom of expression shall be necessary for protection of important constitutional value, reasoned and strictly proportionate. Within the dispute before the Court, the Claimant underlines that disputed provision creates risks for unjustified restriction of the right. Specifically the Claimant considers that the disputed provision creates restriction such as prohibition on use of Flags during assembly and/or possibility of termination of assembly on the ground of occasional violation committed by certain individuals. Even the Respondent does not argue that restrictions of such character should not be used on the process of an assembly. During the hearing disagreement between parties was on the content of the disputed provision and legal restrictions it imposes. Specifically, the Respondent claimed that the disputed provision does not impose the restrictions on right to assembly and demonstration indicated by the Claimant.

3. Based on above mentioned, to adjudicate on the case the Constitutional Court should firstly define the content of the disputed provisions. The Court shall decide whether it is possible for the disputed provision to be applied as indicated by the Claimant, while they are interpreted in good faith.

4. Within the scope of this constitutional litigation two legal provisions of the law of Georgia “On Assemblies and Demonstrations” are disputed. These provisions regulate different aspects of the process of Assemblies and demonstrations. Therefore, the Constitutional Court will decide constitutionality of each provision separately.

5. Subparagraph “b” of paragraph 2 of Article 11 of the law of Georgia “On Assemblies and Demonstrations” prohibits participants of assembly from carrying items or substances, which are or may be used to injure the life and health of participants of the assembly or demonstration, or other persons. The Claimant party considers that mentioned disputed legal provision does not define scope of restriction with sufficient clarity; therefore based on the disputed provi-

sion carrying an item (items) which are directly related to exercising freedom of expression (for example, flag which has a flagstaff, etc.) or are related to personal use (for example, a crutch, small scissors and a nail buffer placed in a handbag, etc.) may be prohibited during an assembly. Based on this argumentation, it is clear that the Claimant is not requesting from the Court to rule on constitutionality of restriction to carry during an assembly items and substances, which are not related to freedom expression and are intended to harm the health of the people. The Claimant considers that violation of paragraph 1 of article 25 of the Constitution is caused by prohibition to carry items which are necessary to exercise right to peaceful assembly. Furthermore, the Claimant considers that disputed legal provision creates possibility for abuse of power by state representatives and generates opportunity to interrupt peaceful assembly merely based on the fact that participant has items, which hypothetically could be used to harm people.

6. Based on above mentioned, for adjudicating on this dispute, the Constitutional Court does not face a necessity to rule on constitutionality of prohibition on carrying certain items during assembly. The Court will decide, while interpreting in a good faith, whether disputed legal provision created the possibility to restrict carrying items related to assembly, leaves opportunity for abuse of power by police and causes interruption of exercising the right to peaceful assembly without existence of threat of injuring health and life of the people.

7. The disputed legal provision prohibits participants of assembly from carrying items, which are used or might be used to harm health and life of participants of the assembly or other people. In the present case, the content and scope of the words “is used” and “may be used” must be determined separately. The term “is used” refers to the nature of the item itself. Through this term, the law refers not to the existence of the fact of use of such items in detriment of human health, but to the general danger arising from carrying such items during assembly. Carrying such items and substances during assembly, without performing any specific dangerous act by the carrier, in itself creates reasonable suspicion that peaceful nature of assembly might be endangered. The disputed regulation covers the items, which although is not included within the items and substances prohibited under the subparagraph “a” and “c” of paragraph 2 of article 11 of the law, but in practice such items have been used to injure health of human during assembly, which creates reasonable ground to consider that carrying such items during assembly involves real danger to peaceful character of assembly. For example, there have been occasions when participants of assembly used stones to harm people and property after assembly lost peaceful character. It is evident, that during assembly a stone as a general rule is an item which is used as a tool of violence rather than instrument of expression. Therefore, carrying a stone on assembly is clearly correlated to intent of violence and not to realisation of freedom of expression. At the same time, it is not possible for a stone to be included within the items, which fall under the scope of subparagraph “a” and “c” of paragraph 2 of article 11 of the law of Georgia

“On Assemblies and Demonstrations”. A stone is not considered as any type of weapon or explosive substance; use of a stone for the purpose of expression cannot be unconditionally prohibited. Main function of a stone is not to harm others; however the danger exists that stones will be used for such purpose, therefore grounds could also exist for prohibition on carrying the mentioned items during assembly. The term “is used” is dedicated to prohibit carrying of mentioned type of items; i.e. it covers the occasion in which carrying the items on assembly by itself creates clear doubt for everybody regarding the peaceful character of the assembly. Unlike a stone a flag is not associated to the item which is used for injuring people. It would be unreasonable to interpret the disputed legal provision in a way to conclude that it makes general prohibition on carrying a flag during assembly or, based on character of a flag, considers it to be an item which is used to harm a person.

8. The Constitutional right to peaceful assembly, not only prohibits state from interrupting within the process of peaceful assembly, but it also creates obligation on state to protect peaceful proceeding of the assembly. State is obliged to take necessary measures, including adoption and implementation of suitable laws, for protecting life and health of participants of an assembly.

9. Generally, law is required to be as specific and as clear as possible, while regulating interference in the human rights; however this does not exclude necessity of adoption of general legal provisions. Dynamic nature of human life might create new challenges, which could not be foreseen earlier, or eliminate threats which existed in the past. It is very difficult and with high probability impossible to create complete list of items, which is currently used to injure people and might become usable for mentioned purpose in the future. Therefore it is often necessary for the law to have general nature; but it should not enable possibility of interpretation according to which content of the law will violate human rights. In the present case, disputed legal provision cannot be considered to be problematic, only because of its general nature. It is unimaginable for the lawmaker to be required to create precise list of prohibited items and update it whenever relevant circumstances change. In the present case, wording – “items which are used for injuring people” presents sufficient indication for participants of an assembly and representatives of state, in every specific situation to evaluate adequately which items are prohibited and which are not. It is undisputable, that items indicated by the Claimant, which are necessary for organising and performing assembly, does not fall under the scope of the wording - “is used” to injure people contained within the disputed legal provision.

10. The term “may be used”, contained within the disputed legal provision, unlike the term “is used” does not only refer to general character of the item. It is also focused on the usage of the item and on behaviour of participants of assembly. Based on the established case-law of the Constitutional Court, in order to make comprehensive interpretation of legal provision, it should be interpreted not only literally but also in the context of other legal provisions; purpose and

content of the legal provision should be taken in to account. While deciding on constitutionality of a legal provision, reasonable interpretation of the law dictates that, “the disputed provision shall not be considered separately from other related norms, because such approach may lead the Constitutional Court to wrong conclusions” (Judgment N2/2-389 of the Constitutional Court of Georgia on the case of “The citizen of Georgia Mrs. Maia Natadze and others v. the Parliament and the President of Georgia”, October 26, 2007). Therefore, purposes and functions of article 11 of the law of Georgia “On Assemblies and Demonstrations” should be taken into consideration while interpreting the disputed provision.

11. Purposes and functions of article 11 of the law of Georgia “On Assemblies and Demonstrations” is protection of security of people and important public values during assembly. The First paragraph of the same article prohibits appeals which involve evident, direct and substantial danger of committing offence. And the second paragraph – to ensure a peaceful character of assembly – prohibits carrying items, use of which is dangerous to human health and life. Derived from the same spirit, the disputed provision is aimed to ensure peaceful nature of assembly and this aim should be taken into consideration while interpreting the provision. Prohibition on carrying certain items relates to the protection of public order. The term “could be used” relates not to the nature of a certain item itself, but to the cases, when conduct of a participant of assembly creates reasonable suspicion, that he/she will use the item he/she is carrying to damage the people. For example, as it was mentioned previously, the disputed provision does not restrict carrying a flag or a banner during assembly and demonstration. There is nothing illegal in using large number of flags and banners during assembly, nor does the state present negative attitude towards these items. However, in cases when the flagstaff or the other part (spike) is specially prepared to cause damage, carrying such items during the assembly might be related to harm other people. Accordingly, in cases when health and security of the people is under real and eminent danger, caused by possible use of flagstaff, the disputed provision establishes power of state representatives to prevent the use of dangerous objects and not wait until commencement of the actual violence by participant of the assembly. Therefore, the participants can, for the purpose of expressing opinion, freely use a flag, without interference from the state. Based on the disputed provision prohibition on use of a flag can be made only if real and eminent danger of injuring people is presented. It is possible to mention different types of subjects, which are generally harmless in nature but because of the conduct of a participant of assembly, carrying these items might be restricted based on the disputed provision. Of course, the disputed provision does not prohibit carrying food products (for example, egg) or the chair, if they are used according to their general function. However, in the case when real danger of infringing safety of the people or injuring them by the items exists, carrying such items might be restricted based on the disputed provision.

12. According to the Constitutional Court’s case-law, the fact that the

content of the disputed provision derived from its most reasonable interpretation is in conformity to the Constitution is not always sufficient for declaring the disputed provision constitutional. It is necessary that the disputed provision does not allow possibility for unconstitutional application, while it is interpreted in good faith. Within the constitutional dispute, the Constitutional Court “should examine whether the certainty of the norm is of sufficient degree to rule out the possibility of violation of the constitutional right. Obviously, this does not concern the cases when constitutional right is violated because of an illegal act. Examination of such issues is outside the competence of the Constitutional Court. The decisive significance has the following factor: whether a norm, read and applied adequately to its texts and contents, contains risk of violation of the constitutional right“ (Judgment N1/3/407 of the Constitutional Court of Georgia, on the case of “Georgian Young Lawyers Association and citizen of Georgia – Ekaterine Lomtadze v. the Parliament of Georgia”, December 26, 2007, II-11). Accordingly, in the present case, the Court must answer the question, whether the provision might be interpreted in a way, under which it will enable state representatives to arbitrarily restrict carrying assembly related items in absence of the danger to harm life and health of the people.

13. First of all it should be noted that it is unreasonable to interpret the disputed provision in a way according to which any items, which could hypothetically be used to injure people fall under the prohibition. The good faith interpretation of the disputed provision does not leave any possibility to consider that scope of wording “may be used” in each case relates only to general character of the items independently from the conduct of a demonstrator. It is unimaginable the content of the disputed provision to be related to prohibiting items intended for daily, domestic use, just because they hypothetically could be used for injuring people. The good faith interpretation of the disputed provision prevents finding such content in it. If demonstrators were prohibited to carry such items in absence of danger of harming people, it would result in breach of the law, not in actions taken based on the disputed provision.

14. It should be further noted that, according to paragraph 3 of Article 2 of the law of Georgia “On Assemblies and Demonstrations” “The restriction of the rights recognised and protected by this Law shall: a) be addressed to achieve the legitimate aims indicated by paragraph 4 of Article 24 of the Constitution of Georgia; b) be prescribed by the law; c) be necessary for a democratic society; d) be non-discriminatory; e) be proportionally restrictive; f) be such that the benefit protected by the restriction exceeds the damage caused by the restriction”. This provision defines terms and conditions for use of discretionary powers of the government in relation to the right to assembly. Accordingly, it constitutes guiding principle for the police while interpreting the disputed provision and action based on it. Paragraph 2 of Article 6 of the “General Administrative Code of Georgia” states: “An administrative agency is obliged to exercise discretionary powers solely for the purpose for which it was granted to the authority.” The principles

defined by mentioned legal provisions are extremely important for defining the words “may be used”. It is evident that the aim of the restriction is protection of public order, by ensuring peaceful proceeding of the assembly. At the same time, law defines that the restriction shall be proportionate and the benefit protected by the restriction should exceed the damage caused by it. Therefore, it is obvious that in order to restrict carrying certain items during assembly based on the disputed provision countervailing legal benefit shall exist protection of which is ensured by the action of state representatives. The need to protect such legal interest can exist only in cases when real and eminent danger towards the people is presented. The mentioned legal provisions create additional guarantee against the interpretation of the disputed provision according to which it prohibits carrying items necessary for realisation of freedom of expression during an assembly. Existence of real danger towards life and health of people is necessary precondition for performing an action by authorised state representative based on the disputed provision. Any action performed by administrative bodies disregarding mentioned principle would be contrary to the law. Accordingly, there is no possibility disputed provision to be interpreted and applied by the meaning, which is indicated by the Claimant.

15. Additionally it should be noted, that the Claimant named problems derived from the disputed provision solely based on the hypothetical definition of the provision made by the Claimant itself. The Claimant did not submit any evidence to support that in practice the disputed provision is interpreted and applied unconstitutionally. At the same time, neither the Constitutional Court is aware of cases when authorised representative of administrative bodies or judges of the General Courts interpreted and applied the disputed provision with the same meaning as indicated by the Claimant. “In many legal acts there are ambiguous formulations. Their interpretation and application is wholly dependent upon the practice. Therefore, it is obvious, that in the case of vague norm, while examining its compatibility with the constitution, it is of high importance how it is applied in practice” (Judgment N1/3/407 of the Constitutional Court of Georgia, on the case of “Georgian Young Lawyers Association and citizen of Georgia – Ekaterine Lomtadze v. the Parliament of Georgia”, December 26, 2007, II-28). According to the case-law of the Constitutional Court, unconstitutional application of disputed legal provision in practice does not automatically conclude that the provision is unconstitutional. Additionally unconstitutional legal provision cannot automatically be considered constitutional, if in several occasions it has been used in conformity with the Constitution. However “If the application practice of a vague norm complies with the constitution this of course indicates, to some extent, constitutionality of this norm, because it is supposed that if application of the norm is constitutional then this means that it can be interpreted in a consistent manner” (Judgment N1/3/407 of the Constitutional Court of Georgia, on the case of “Georgian Young Lawyers Association and citizen of Georgia – Ekaterine Lomtadze v. the Parliament of Georgia”, December 26,

2007, II-28). Therefore, lack of application of the disputed provision with the meaning indicated by the Claimant, constitutes additional arguments for proving its constitutionality.

16. The Claimant also disputes constitutionality of paragraph 6 of article 13 of the law of Georgia “On Assemblies and Demonstrations” with respect to paragraph 1 and 3 of article 25 of the Constitution of Georgia. According to this provision, if organiser did not fulfil its obligation defined in the paragraphs 2 and 3 of article 13 of the law of Georgia “On Assemblies and Demonstrations” or “if he/she has fulfilled obligation but still failed to eliminate the violation in a reasonable period of time, law enforcement agencies will use measures established under the international law and legislation of Georgia to eliminate violations, unblock the traffic roadway and/or restore traffic”. The Claimant party challenges the provision since it believes that based on the provision representatives of the state may request termination of the assembly if the organiser has not been able to eliminate the illegal actions of few individuals presented during the event. The Claimant considers that the legislator’s action would be within the scope of legitimate aim, if it mandated law enforcing agencies to counteract offenders and separate them from the event, after which assembly would continue peacefully.

17. In the present case, the disputed provision makes no indication about the authority to request termination of assembly. However, in the case when roadway is legally blocked, state request to unblock it is in fact equivalent to termination of assembly. According to the article 11¹ of the Law of Georgia “On Assemblies and demonstrations” blocking traffic roadway is allowed only if the assembly cannot be held otherwise; thus, under such circumstances request to unblock the traffic roadway leads to termination of the assembly. Therefore, for adjudication on the case, the Court needs to define whether the disputed provision creates authority to unblock the traffic on the ground of occasional minor offences committed by several individual participants of the assembly.

18. In order the disputed legal provision to become active preconditions need to be fulfilled, which entails that the organiser of assembly did not fulfil its obligation defined in the paragraphs 2 and 3 of article 13 of the Law of Georgia “On Assemblies and demonstrations” or he/she has fulfilled the obligation but still failed to eliminate the violation. The paragraph 2 and 3 of the Article 13 create obligation of organiser to respond to two different types of offences. Paragraph 2 of the Article 13, refers to occasional violations of article 11.1 and 11.2.a-c of the same law as well as violation of article 11.1, 11.2.d and 11.3. Mentioned violations constitute action threatening public order such as: carrying prohibited items during the assembly, making appeals which involve substantial danger of committing offence and so on. In contrast paragraph 3 of article 13 covers cases, when traffic is hindered or traffic roadway is blocked arbitrarily in violation of the Article 11¹ and subparagraph “e” of paragraph 2 of Article 11. The disputed provision indicates that, if there is a case referred to in paragraphs 2 and 3 of

the Article 11 police uses measures established under the international law and legislation of Georgia to eliminate violations, unblock the traffic roadway and/or restore traffic.

19. The disputed provision creates different legal mechanisms to remedy different violations. As it was mentioned above paragraphs 2 and 3 of article 13 refers to two types of violations, therefore two types of legal mechanisms exist to remedy them. Good faith interpretation of the disputed provision makes it obvious, that the wording - "elimination of violation" refers to the circumstance mentioned in paragraph 2 of article 13 (when participants of assembly carry prohibited items during the assembly, make appeals which involve substantial danger of committing offence and so on. While mechanisms related to unblocking the traffic roadway and/or restoring traffic refers to the circumstance mentioned in paragraph 3 of article 13, i.e. when the flow of traffic is hindered artificially or roadway is blocked while quantity of participant does not create necessity of blocking the roadway. Based on above mentioned it is obvious that in cases when certain individuals carry prohibited items during an assembly or commit other offences, the disputed provision gives police the power to eliminate these violations without terminating proceeding of the assembly. Thus the disputed provision regulates proceeding of assembly exactly the same way as the Claimant party considered to be correct. Obviously, in cases when carrying and using prohibited items during an assembly has a massive character, elimination of violations might factually result in termination of assembly or demonstration. However as it was mentioned already the Claimant does not consider that such content of the disputed provision is unconstitutional. The power of state representatives to unblock the roadway exists only when it is blocked illegally, i.e. in the situations when based on quantity of participants holding the assembly is possible without blocking the roadway, therefore unblocking roadway will not cause termination of proceeding of the assembly.

20. Giving different meaning to the disputed words would be result of bad faith interpretation of the disputed provision. General spirit of the law of Georgia "On Assemblies and Demonstrations" and its specific provisions give clear and non-contradictory definitions about circumstances under which demonstrators have the right to block the roadway and circumstances under which state representative are authorised to request unblocking it. In particular according to paragraph 1 of the 11¹ "When participants of an assembly or demonstration fully or partially block the traffic roadway, the executive body of local self-government may take a decision to unblock the traffic roadway and/or restore traffic, if it is possible to hold the assembly or demonstration otherwise considering the number of participants". The Law clearly defines the principle based on which it allows blocking roadway, therefore, in all other cases state is authorised to require unblocking it. The disputed provision constitutes continuation of the contested logic. In case when the quantity of participants of assembly is sufficient to give rise to the right to block the roadway, request from administrative body to unblock the

roadway, as a mechanism to terminate assembly, not only contradicts the disputed provision, but also violates legal provisions related to it and general spirit of the law of Georgia “On assemblies and Demonstrations”.

21. The Constitutional Court of Georgia has already adjudicated case involving issue of blocking roadway during assembly and on April 18, 2011 delivered Judgment №2/482,483,487. The Court defined cases when it is justified for the state to restrict blocking traffic roadway, in particular court stated: “right to assembly and manifestation shall be granted priority if its realisation without restriction of rights of others is impossible and when blockade of roadway is objectively necessary. ... when manifestation can be held without violation of rights of others and without infringement on public order at the place, where addressee of protest or solidarity of manifestation is present, government is empowered to restrict right to assembly or manifestation, when it is realized through blockade of the roadway or street, which in its turn violates rights of others or conflicts with public order and security” (The judgment №2/482,483,487,502 of the Constitutional Court of Georgia on the case of “Political Union of Citizens “Movement for Unified Georgia”, Political Union of Citizens “Conservative Party of Georgia”, Citizens of Georgia - Zviad Dzidziguri and Kakha Kukava, Georgian Young Lawyers’ Association, Citizens - Datchi Tsaguria and Jaba Jishkariani, Public Defender of Georgia v. the Parliament of Georgia”, April 18, 2011, II-38,39). Therefore the Court noted that state is not authorised to restrict blocking traffic roadway in cases when effective realisation of right to peaceful assembly is not possible otherwise. Furthermore, the Court ruled that it is not proportionate for the state to request termination of assembly in cases when few number of participants attempt blocking traffic roadway. “Naturally, the government acts within powers granted by the Constitution and law when it demands to bring the assembly in compliance with law from participants of assembly ... However, act of government will not be proportionate on the other hand, if it requires immediate termination of assembly or manifestation as soon as the violations of article 11¹, clause 1, 2 or/and 3 happens. Occupation of the road by participants of assembly or manifestation or blockade of roadway in disregard of law, shall be ground for requirement to bring assembly in compliance with the law, instead of its immediate termination” (The judgment №2/482,483,487,502 of the Constitutional Court of Georgia on the case of “Political Union of Citizens “Movement for Unified Georgia”, Political Union of Citizens “Conservative Party of Georgia”, Citizens of Georgia - Zviad Dzidziguri and Kakha Kukava, Georgian Young Lawyers’ Association, Citizens - Datchi Tsaguria and Jaba Jishkariani, Public Defender of Georgia v. the Parliament of Georgia”, April 18, 2011, II-47,48). Accordingly, rules regulating blocking traffic roadway during the assembly is clearly defined not only by the law of Georgia “On assemblies and demonstrations”, but also by the Judgment of the Constitutional Court of Georgia. This constitutes additional safeguard preventing interpretation of the disputed provision in a manner indicated by the Claimant.

22. It is important to note that the disputed provision contains a statement that even when authority to use legitimate force exists police is bound by legislation of Georgia and principles of the international law. In particular, law of Georgia “On Police” and other normative acts list the mechanisms, which police is authorised to use to ensure public order. For example, articles 19-35 of the law of Georgia “On Police” define the types of police measures and their implementation procedure. The main purpose of the disputed provision is to establish that while ensuring peaceful character of assembly police is obliged to act within the scope of power given by the law and respect principle referred to in paragraph 3 of article 2 of the law of Georgia “On assemblies and demonstration” and international human rights standard defined by the international law while using the force.

23. Based on abovementioned, it is apparent, that the disputed provision regulates legal relations exactly the same way which was considered desirable by the Claimant. In case of occasional violations committed by certain individuals during an assembly and/or demonstration, the disputed provision creates authority and obligation on police to ensure elimination of such violation and ensure peaceful character of the assembly and the demonstration. The disputed provision does not create power to terminate assembly and demonstration, therefore, in this regard it does not contradict to paragraph 1 and 3 of article 25 of the Constitution of Georgia.

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 3 of article 25, subparagraph “a” of paragraph 1 of article 39, paragraphs 2, 4, 7 and 8 of article 43 of the organic law of Georgia “On The Constitutional Court of Georgia”, paragraph 2 of article 7, paragraph 4 of article 24, articles 30, 31, 32 and 33 of the Law of Georgia “On Constitutional legal Proceeding”

THE CONSTITUTIONAL COURT

RULES:

1. The Constitutional Claim N538 (Political Union “Free Georgia” V. the Parliament of Georgia) on constitutionality of subparagraph “b” of paragraph 2 of Article 11 of the law of Georgia “On Assemblies and Demonstrations” with respect to paragraph 1 of article 25 of the Constitution of Georgia and constitutionality of the subparagraph 6 of article 13 of the same law with respect to paragraphs 1 and 3 of article 25 of the Constitution of Georgia shall not be upheld.

2. This judgment is in force from the moment of its public announcement on the hearing of the Constitutional Court.

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

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

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

Members *of the board*:

Konstantine Vardzelashvili

Ketevan Eremadze

Maia Kopaleishvili