
**CITIZEN OF GEORGIA ILIA CHANTURAIA
V. THE PARLIAMENT OF GEORGIA**

N2/2/558

Batumi, February 27, 2014

Composition of the Board:

Zaza Tavadze – Chairman of the Hearing;
Otar Sichinava – Member;
Lali Papiashvili – Member, judge rapporteur;
Tamaz Tsabutashvili - Member.

Secretary of the Hearing:

Darejan Chaligava
Title of the Case:
Citizen of Georgia Ilia Chanturaia V. the Parliament of Georgia.

Subject of the Dispute:

Constitutionality of section 9 of Article 212 of the Civil Procedure Code of Georgia with respect to paragraph 1 of article 42 of the Constitution of Georgia.

Participants of the Hearing:

Representative of the Claimant - Giorgi Gotsiridze; Representative of the Parliament of Georgia - Tamar Meskhia.

I

Descriptive Part

1. On June 24, 2013 a constitutional claim (registration N558) was lodged to the Constitutional Court of Georgia by citizen of Georgia Ilia Chanturaia. On June 24, 2013 N538 Constitutional Claim was assigned to the Second Board of the Constitutional Court of Georgia for ruling on admission of the case for consideration on merits.

2. Preliminary session of the second board of the Constitutional Court without oral hearing was held on November 5, 2013 for ruling on admission of the case for consideration on merits. Pursuant to the Recording Notice N2/8/558 of the Second Board of the Constitutional Court the constitutional claim N558 was admitted for consideration on merits. The oral hearing on merits was held on February 3, 2014.

3. The legal basis for submission of the constitutional claim is paragraph 1 of article 42, subparagraph “f” of paragraph 1 of article 89 of the Constitution of Georgia, subparagraph “e” of paragraph 1 of article 19 and paragraph 1 of article 39 of the organic law of Georgia “On the Constitutional Court of Georgia”, articles 15 and 16 of the Law of Georgia “On Constitutional Legal Proceeding”.

4. According to section 9 of article 212 of the Civil Procedure Code of

Georgia “An order imposing a penalty and/or expulsion from a courtroom under this article is issued without an oral hearing and it may not be appealed”. At the same time article 212 defines grounds for penalties for breaching order in the courtroom during civil proceeding. According to paragraph 3 of article 212, in cases of disruption of order at the hearing, disobedience to an order of the presiding judge or contempt of court, the presiding judge may, following deliberation in the courtroom, issue an order to penalise the participant of the trial and/or the person attending the hearing, and/or to expel him/her from the courtroom. The disputed provision defines that the mentioned order is adopted without an oral hearing and may not be appealed.

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

6. It is indicated in the constitutional claim that Ilia Chanturaia, as an attorney, has participated in a proceeding of case before the Chamber of Civil Cases of the Tbilisi City Court. Record of the hearing indicates that Ilia Chanturaia has committed contempt of the court, namely he arrived late on a hearing. Based on the mentioned provision of the Civil Procedure Code of Georgia, Tbilisi city court, following deliberation in the courtroom, issued the order, imposing fine, amounting 50 GEL, on Ilia Chanturaia. Based on the disputed provision – paragraph 9 of article 212 of the Civil Procedure Code of Georgia, mentioned order may not be appealed.

7. The Claimant, Ilia Chanturaia submits, that giving power to the court, based on the disputed provision, to penalise and/or to expel from the hearing an attorney without respecting his right to be heard is incompatible with both right to fair trial and right to defence. In addition, each fine has a chilling effect on the right to the effective implementation of the right to defence, attorney might refrain himself/herself from effective defence of a client in order to avoid penalties.

8. The Claimant states that the possibility for the court to make a mistake is quite high while determining existence of the offence prescribed by the disputed provision. Additional valuation of factual and legal ground by the judge which did not witness the incident and is less probable to be influenced by emotional action of the attorney is necessary. Therefore in order to exclude the errors made by the court and its adverse negative effects, it is necessary for the attorney to be able to appeal at least once the order fining or/and expelling him/her from the hearing. Mentioned possibility is excluded by paragraph 9 of article 212 of the Civil Procedure Code.

9. In order to support the argumentation the Claimant additionally refers to the related precedents of the Constitutional Court of Georgia, the European Court of Human Rights and the Supreme Court of the United States of America.

10. During the hearing on merits the Respondent agreed on constitutional claim in the part concerning constitutionality of the provision prohibiting appeal of the order adopted by the court.

11. The Respondent explained that the legal provision with similar content was included in the Criminal Procedure Code, which was amended on October 4, 2013. Recently a procedure has started within the Parliament of Georgia to make analogous amendment in the Civil Procedure Code.

12. The Respondent also submitted that generally the appeal serves two purposes. First of all, it is the mechanism through which the parties have the opportunity to achieve the best possible outcome for them. Secondly the appeal promotes uniform interpretation of law and foundation of ideals such as permanence and fairness. Allowing the appeal of a ruling has a preventive effect and therefore constitutes a powerful motivator for judges to work consciously and avoid mistakes or arbitrariness. Appeal mechanism is linked to the essential elements of the right to fair trial - the reasoned decision.

13. During the hearing on the case the Respondent pointed out that the legitimate public aim of restricting the appeal of court ruling on imposing fine or/and expulsing from court hearing is to protect the dignity of participant of the hearing, order and established etiquette. Furthermore legitimate aim of the provision could also be prevention of delay of an on-going court proceeding, therefore ensuring uninterrupted execution of justice. However in the case when the court ruling concerns expulsing of a person from the court hearing, paragraph 4 of article 212 of the Civil Procedure Code obliges the judge to postpone the hearing. Accordingly, the Respondent agreed on the Claimant's argument that in cases when person is expelled for the hearing, restricting attorney's right to appeal could not be justified with the legitimate interest to avoid delay of the proceeding.

14. The Claimant party further indicated on the hearing on merits that holding an oral hearing before adopting the ruling creates better possibilities for the parties to exercise right to appeal in the future, which is derived from reasoning of the ruling. In addition, the person concerned with the ruling, will have a reasoned decision, and will be able to refer to the specific parts during appeal proceeding.

In relation to the oral hearing the representative of the Parliament explained that giving opportunity to a person to present argumentation about other offence during the main proceeding will delay the proceeding and make it ineffective.

II

Reasoning Part

1. According to paragraph one of article 42 of the Constitution of Georgia, "Everyone shall have the right to apply to the court for protection of his/her rights and freedoms". The Constitutional Court has clarified that this provision establishes the right to a fair trial, content and scope of which is defined by the Constitution and international legal acts.

2. The Constitutional Court has frequently stated that the right to fair trial contains ability to protect every value, which essentially constitutes the right,

through the court. Mentioned possibility (judicial protection of right) constitutes the guarantee on comprehensive realisation of each right.

3. Within the present case the Constitutional Court should determine whether the disputed regulation constitutes interference with a fundamental right to a fair trial and whether it is compatible with the fundamental right protected by paragraph 1 of Article 42 of the Constitution.

4. According to section 3 of article 212 of the Civil Procedure Code of Georgia, In cases of disruption of order at the hearing, disobedience to an order of the presiding judge or contempt of court, the presiding judge may, following deliberation in the courtroom, issue an order to penalise the participant of the trial and/or the person attending the hearing, and/or to expel him/her from the courtroom. The disputed provision defines that the mentioned order is adopted without an oral hearing and may not be appealed.

5. The opportunity of a person, to have public hearing and present opinion on the cases related to his/her right as well as the opportunity to appeal legal acts concerning his/her right is protected by the right to a fair trial. Therefore, any regulation which restricts mentioned opportunity of the person constitutes interference into the right to a fair trial. Thus the disputed provision interferes into the right protected under paragraph 1 of the Article 42 the Constitution of Georgia.

6. Although the right to a fair trial has crucial importance for the existence of a modern, democratic State and the Rule of Law, the right protected under paragraph 1 of the Article 42 of is not absolute. This right can be restricted for reaching legitimate aims relevant to democratic society. At the same time while restricting the right lawmaker shall maintain reasonable balance between the means employed and the legitimate aim of the restriction.

7. Accordingly, the Constitutional Court must determine which legitimate aims are intended to be achieved by the regulation prescribed by Article 212 of the Civil Procedure Code, whether means employed for restriction are proportional to the legitimate aim and whether Constitutional standard for restricting the right protected under Article 42 of the Constitution is respected.

8. The disputed provision refers to different measures of compulsion (imposition of fine, expulsion from court hearing) and to different individuals (participants and attendants presented on the court hearing). Therefore, while deciding on constitutionality of the disputed provision, the Constitutional Court takes into consideration character of the mentioned measure, different legal status and interests of the individuals.

9. As derived from relevant provisions of the Civil Procedure Code, participants and attendants of the court hearing are individuals equipped with different rights and obligations. The interest of participant of the hearing to be protected from unsupported imposition of fine or expulsion from the proceeding, to have sufficient procedural guarantees to protect themselves against such measures and to be able to attend and participate in the hearing, present their argumentation and

defend their position is much higher compared to the corresponding interest of the attendants. Therefore the Constitutional Court defines that different approach is needed to assess the regulation regarding imposition of fine or/and expulsion from the hearing of the participant and of the attendant.

10. Intensity of interference requires special attention while assessing constitutionality of restriction on the right to a fair trial. At the same time, importance of the right and/or legal interest, judicial protection of which is restricted, should also be taken into consideration. Obviously, the standards of assessment will be different with respect to legal interests of different significance.

11. The power enshrined in paragraph 3 of the Article 212 is inseparable from the Judiciary. It is derived from court authority to safeguard proper and orderly proceeding of the court hearing to protect the judicial authority and to provide a fair trial.

12. The measures - expulsion from court hearing and imposition of fine aims to ensure the normal proceeding of hearing under which the parties will be able to present their positions and will have adequate and equal opportunity to defend themselves; to prevent interruption from attendants into the court hearing; instant elimination of the offence; prevention of recurrence of similar actions in future and punishment of individual for the offence.

13. Setting the fine by a lawmaker for improper conduct at the court hearing differs from other financial "sanctions"; it does not have the purpose to compensate the so-called injured party. Imposition of the fine causes certain property (monetary) losses by individual, which is considered to be a sufficient and adequate response to an offence committed by him/her. Purpose of imposing the fine is instant elimination of the offense, its prevention and punishment of individual for his/her action. Thus, the fine is imposed for the purpose to ensure obedience to the court rules and can be considered as a response on contempt of the court.

14. The process of expulsion from the hearing supports protection of rights of the participants and proper proceeding of the hearing. Predominantly it is preventive measure but it also has punitive nature since it deprives an individual opportunity to be presented at the court hearing.

15. The legal consequences of an expulsion are different for a participant of the hearing (for example, Claimant, Defendant or other subjects) compared to the attendants. Although in both cases the expulsion has punitive nature, use of it against attendant of the hearing deprives him/her the opportunity to attend the court hearing, while when it is used against the participant it also deprives him/her the opportunity to participate in hearing, to present argumentation and to defend his/her position by himself. Even in case when a party is represented by attorney/attorneys, the right to protect himself predominantly belongs to the party, which shall have the possibility to correct and/or monitor actions of his representative.

Expelled person is deprived of this opportunity which might sufficiently

influence proper protection of his/her interest and effective realisation of the right to defence during court hearing.

16. The Constitutional Court defines that standard of assessment of constitutionality of provision shall be strict in cases when restriction of the right to a fair trial is related to the procedures used to impose punishment for an offence and its appeal. A person, who is accused in an offence, should have an opportunity to fully exercise procedural safeguards of a fair trial and the right to appeal. At the same time, procedural safeguards might be different with respect to the imposition of varying severity of punishment. However, in any case, a person's legal status must meet minimum standards of the right to a fair trial.

17. In the present case, it has been established that the right to a fair trial is restricted, which is related to imposition of punishment amounting financial fine or expulsion from a court hearing as a response to a particular offense (disrespect to the court, disobedience to order of chairman of the hearing, causing disorder during the court hearing).

18. The principle of proportionality requires that "the restrictive regulation must be a reasonable and necessary means for achieving (legitimate) public aim. At the same time, the intensity of the restriction must be proportionate to the aim pursued. It is impermissible to pursue a legitimate aim at the expense of increased restriction of human rights" (Judgement №3/1/512 of the Constitutional court of Georgia, June 26, 2012 on the case of "Citizen of Denmark Heike Cronqvist vs. the Parliament of Georgia", II-60).

19. In the instant case as well based on the principle of proportionality the Constitutional Court assesses whether the private and public interests are properly balanced.

20. The assessment of constitutionality of the provision, first of all, requires identifying a legitimate public aim, intended to be achieved by the restriction. Any restriction of a human right without legitimate public aim is arbitrary, fundamentally unjustified and unconstitutional.

21. According to the explanation presented by the Respondent legitimate aim of paragraph 9 of article 212 is to protect dignity of participant of the proceeding, order and established etiquette.

22. The Respondent's representative at the hearing on merits also claimed that holding oral hearing and allowing appeal will delay main proceeding of the court. The defendants claimed that the restriction of the right serves to smooth execution of justice.

23. The rights and freedoms of people presented in the courtroom may be restricted in order to protect the important interest, such as the authority of the courts. In order to ensure proper administration of justice, judge should have the power to protect authority of the court against unreasoned and malicious accusations and to ensure proper proceeding of the hearing. Accordingly, imposition of penalties by judge for contempt of court intends to protect right to a fair trial.

24. Based on above mentioned, the Constitutional Court considers that

right to a fair trial may be restricted to achieve important legitimate aims, such as unhindered administration of justice, protection of order, dignity of participants of the proceeding and established etiquette during court hearing.

25. According to a definition made by the Constitutional Court of Georgia “if the restriction is not logically connected with the legitimate aim – the restriction is unjustified. Only in the case of presence of such connection, the Court moves onto next stage in assessing the compatibility of the disputed norm with the Constitution: whether the proportionality between an individual’s right and public interests is respected or not”. (Judgment №1/1/468 of the Constitutional Court of Georgia, on the case of “The Public Defender of Georgia vs. the Parliament of Georgia” dated April 11, 2012, II-44). Therefore, in order the restriction to be considered proportional, thus constitutional, first of all logical connection between indicated legitimate aim and restrictive measure is required.

26. As noted above, the first legitimate aim named by the Respondent is protection of order, dignity of participant of the proceeding and established etiquette during court hearing.

27. Holding an oral hearing before adoption of the court ruling, indicated within paragraph 3 of article 212 of the Civil Procedure Code, and allowing appeal of the ruling cannot create an obstacle on protection of order, dignity of the participant and the established etiquette. In present case providing the procedural safeguard to the individual will not have a negative effect on effective protection of rights of other participant of the hearing.

28. Based on above mentioned, the Constitutional Court finds that logical connection does not exist between the restriction of the right by the disputed provision and legitimate aim to protect order, dignity of participant of the proceeding and the established etiquette.

29. The defendant also named avoidance of delay of the proceeding and unhindered administration of justice as a legitimate aim of the restriction. Proportionality of the restriction in connection to these legitimate aims needs to be considered separately with respect to fining and expelling the attendants and the participant of the proceeding.

30. The Constitutional Court considers that adopting court ruling without oral hearing on imposition of fine and/or expulsion of participant of the proceeding, as well as on imposition of fine on attendant of the proceeding constitutes suitable measures for achieving the legitimate aim. In particular, the adoption of the ruling without oral hearing requires less time and, therefore, avoids delay of court proceeding in case of violation of the order during court hearing. Obviously, simplicity of the procedure supports speediness and effectiveness of justice.

31. The Constitutional Court has repeatedly clarified that the restriction of right should be not only suitable, but also necessary, the least restrictive, proportional measure for achieving the legitimate aim. “Since any legal order is aimed at interrelating objectives and means, this obliges the State to employ such means that will guarantee the attainment of the objective with the due respect to

the principle of proportionality” (Judgment №1/2/411 of the Constitutional Court of Georgia, on the case of “LTD “Russenergосervice”, LTD “Patara Kakhi”, JSC “Gorgota”, Givi Abalaki’s Individual Company “Farmer” and LTD “Energia” vs. the Parliament of Georgia and the Ministry of Energy of Georgia” dated December 19, 2008, II-29).

32. The Court must assess whether measure restricting the human right is selected correctly and if it is possible to achieve the legitimate aim by alternative, less restrictive measure.

Adoption of the ruling without oral hearing

33. The disputed provision provides prevention of undue delay and inefficiency of justice on expense of procedural right (right on oral hearing) of an individual.

34. According to the established case-law of the Constitutional Court, the right to an oral hearing is a one of the substantial elements of the right to a fair trial. It gives a person possibility to defend his/her own interests by presenting his/her opinions.

35. The oral hearing, on the one hand, supports the parties to substantiate their legal demands, while, on the other hand, allows the judge to deliver objective, fair and reasoned judgment as a result of thorough investigation of the case.

36. The reason for expelling the individual from hearing or/and imposing fine on him/her and criteria based on which amount of fine is determined, shall be clearly and thoroughly indicated in the ruling of the court. Providing mentioned reasoning without conducting an oral hearing is practically impossible.

37. At the same time, reasoning of the court ruling supports effective realisation of the right to appeal, enabling the court of higher instance to examine legality and reasonableness of the ruling. It constitutes effective mechanism against arbitrariness of the court.

38. The legal interest of the participant of the court proceeding which is restricted by the disputed provision needs to be taken into consideration. In particular the court ruling on imposition of a fine and expulsion from the hearing significantly influences legal state of participants of hearing. Adoption of the ruling without oral hearing and impossibility to appeal negatively affects the right of the participants to attend the main hearing and defend their interests. At the same time, the participants of the court hearing might refrain from expressing an opinion in order to avoid possible penalties. Therefore, the disputed provision to some extent hinders expression of the opinion by the parties, which underlines high intensity of restriction prescribed by the disputed provision.

39. Concept of contempt of court prescribed by the disputed provision is not clearly and unambiguously defined by the law. Therefore in certain occasions, involuntary behaviour caused by health condition, tactics of defence etc. might be considered as a contempt of court. In some occasions, it is sufficiently difficult to determine line between defensive style and tactics, for instance, a figurative and/or emotional expressions and body language, which intends to

attract the attention of the participants of proceeding on presented arguments or position and contempt of court.

40. Certainly, it is impossible for the law to cover unambiguous and comprehensive description of cases constituting contempt of court. The issue of existence of the contempt shall be decided through analysing circumstances presented in each case. Accordingly, adoption of the ruling involves sufficiently high margin of interpretation and assessment of certain circumstances by the judge, which cannot exclude the possibility that in certain circumstances same facts might be qualified differently by different judges. Therefore, an individual should have opportunity to present his/her opinion and request review of legality of the adopted ruling.

41. The Court notes that the right of individual to present his/her opinion during hearing supports adoption of reasoned ruling, increases possibility of effective realisation of right to appeal and decreases possibility of existence of appeal grounds prescribed by the law, which are unreasonableness or/and illegality of the ruling.

42. The protection standard of the right to an oral hearing sufficiently depends on the content of the proceedings. In cases where the proceedings related to the establishment of formal-legal issues, the legal interest on oral hearing is lower. In such cases, the principle *jura novit curia* (“The Court knows the Law”) is applicable and reference to legal circumstances by the parties has only auxiliary functions. Approach is different in the case when the court has to decide not only formal-legal issues, but also needs to assess factual circumstances as well. Holding an oral hearing and listening to opinions of the parties has special importance in the cases which involve a need to investigate factual circumstances as well.

43. Within the framework of the case the dispute provision restricts oral hearing in case when sanction is imposed for contempt of court. Imposing sanctions on certain offenses is related to investigation of the concrete factual circumstances of the case. Thus, in this case restriction of the right to an oral hearing, relates to proceeding requiring an establishment of factual circumstances. Therefore, in this case interest of an individual to be able to present his/her opinion in the process of adopting the ruling should be overwhelmingly protected.

44. The right to an oral hearing includes interrelated set of procedural guarantees. The disputed provision precluded every component of procedural guarantees enshrined under the right to an oral hearing, including right to orally present opinions regarding imposing sanction on a person. Considering the circumstances that the case involves investigation of fact and imposing punishment after making legal assessment, the Constitutional Court considers that within this process an individual should be equipped with at least a right to present his/her opinions.

45. The legislator can adopt the less restrictive measures which, on the one hand, will grant possibility to an individual to fully enjoy the right to a fair trial guaranteed by the Constitution and on the other hand, will prevent delay of

the court proceeding. For example, the legislator could adopt the law according to which expulsion/fining of an individual will happen as a result of alternative court hearing, which provides an individual with a reasonable time to present his/her opinion. This measure would ensure fair balance between private and public interests.

46. Although creating alternative and additional procedures may cause extra cost, increasing the administrative load to the court, as it was established by the constitutional court: „General administrative difficulties which might occur a result of appeal, should not become ground to restrict right to apply the court” (Judgment №2/6/264 of the Constitutional Court of Georgia on the case of “LLC Uniservice vs. the Parliament of Georgia”, II-2). The Constitutional Court considers that in present case, in the proceeding of imposing sanctions on an individual, saving administrative resources of the court does not justify restriction of the right to fair trial.

47. Therefore, normative content of the disputed provision which establishes authority to adopt the ruling imposing fine on participant, without holding an oral hearing, contradicts the right to a fair trial protected under paragraph 1 of article 42 of the Constitution of Georgia, thus is unconstitutional.

48. As it was already mentioned, standard of assessment of constitutionality of restriction of the right to a fair trial is significantly related to the right and/or legal interest, judicial protection of which is restricted. In this case, the Constitutional Court considers that with respect to the attendant of court hearing, his/her interest to attend a public court hearing is presented. It should be underlined that this interest is much lower than above mentioned legal interest of the participants. Accordingly, the constitutional standard of its protection is also lower.

49. Although expulsion of the attendants of the hearing constitutes restriction on their rights, in this case public interest to support proper administration of justice and to provide fair hearing to the participant of proceeding has priority over the restriction. Warning made by the court before adopting the ruling on expulsion, has sufficient effect and gives an opportunity to individuals to alter their behaviour and avoid expulsion.

50. At the same time generally the number of attendants of a court hearing is considerably higher than number of participants and initiating oral hearing against every individual attendant who needs to be expelled would significantly disturb and delay the main proceeding. In this case, the mentioned legitimate aim could not be achieved with less restrictive measure.

51. Accordingly, restriction imposed based on this part of the disputed provision – adoption of the ruling on expulsion of the attendant without holding an oral hearing, is suitable and proportional measure for achieving legitimate aim - avoiding interruption and delay of the main proceeding.

Restricting appeal of the court ruling

52. As it was noted above, in order the restriction to be considered proportional, thus constitutional, firstly it should be determined whether the measure

employed for the restriction is selected properly and whether it is possible to achieve the legitimate aim by employing a less restrictive measure.

53. In the present case the restriction of the right to a fair trial is constituted by not allowing appeal on the court ruling which imposes fine on individual or expels him/her from court hearing. The Respondent named avoiding interruption and delay of the main proceeding and providing speedy and effective justice as a legitimate aim of the restriction.

54. The right to apply to the court and protect right through court proceeding is considered to be one of the most significant guarantee of realisation of this right. Without having an opportunity to apply to the court for the purpose of protecting the right, the ability of enjoyment of the right itself is questioned. “Accordingly, the prohibition or disproportional restriction to apply to a court for protecting the rights and freedoms shall violate not only the right to fair trial, but also, simultaneously, shall contain the risk of negligence of the right itself, for protection of which it is prohibited (restricted) to apply to a court” (Judgment №1/466 of the Constitutional Court of Georgia June 28, 2010, “The Public Defender of Georgia v. the Parliament of Georgia”, II-2)

55. The right to appeal the ruling of the first instance court performs preventive function; on the one hand, it constitutes avoidance mechanism for arbitrariness of the judge and also pushes the judge to avoid possible errors by himself/herself and on the other hand creates an opportunity for the Appellate Court to correct committed mistakes. At the same time, the comprehensive realisation of the right to appeal contributes establishment of uniform court practice and performs an important role in providing legal security.

56. The court ruling about expulsion of the individual and/or imposition of a fine on him/her may not be appealed either separately or with judgment delivered by the court through main hearing. In particular, according to the section 3 of article 377 and section 2 of article 404 of the Civil Procedure Code during the appeal proceeding of the judgment of lower instance court, higher instance court might review decisions of the court prior to the judgment notwithstanding whether separate appeal of the decision is allowed or not. The disputed provision clearly establishes that, in case of the contempt of the court the ruling and not the decision is adopted by the court and the ruling cannot be appealed. Therefore, the disputed provision excludes any broad definition of the law, which would enable a person to request a review of the ruling by a court of higher instance.

57. The disputed provision completely excludes exercise of the right to appeal by an individual. The court considers that protection of the right established under paragraph 1 of the article 42 of the Constitution of Georgia should be guaranteed for any person against whom state uses measures consisting coercive element, notwithstanding the legal status of the individual within court proceeding. The regulation, which excludes every mechanism to apply to the court, contradicts to the essence of the right protected under paragraph 1 of article 42 of the Constitution of Georgia and cannot be justified by a legitimate aim.

58. The Court emphasizes that, even achievement of such important legitimate aims, as respect to the Judiciary, unhindered administration of justice, protection of order, dignity of participant of the proceeding and established etiquette should not be implemented on expense of violation of fundamental human rights. The legal proceeding which enables judge to try an individual while not giving him/her the right to appeal court ruling issued on contempt of court, disproportionately restricts the right to a fair trial.

59. The Constitutional Court additionally defines that in the present case granting an individual the right to appeal the court ruling on imposition of fine or/and expulsion from the hearing, will not result in delay of the main proceeding and will not create an obstacle to speedy and effective justice. In case of appeal the legality or/and reasonableness of the ruling should be examined within the framework of separate proceeding. Thus, giving the procedural right to the individual will not have a negative impact on achievement of aims of the employed measure. Therefore the Constitutional Court finds that normative content of the disputed provision, which precludes possibility to appeal the court ruling on imposition of fine/expulsion from the hearing, is not logically related to the legitimate aims specified by the defendant.

60. Based on the importance of the right to appeal the decision imposing sanctions, the Constitutional Court considers that prohibiting appeal of the court ruling (on imposing fine and or expulsion) to the person, which is sanctioned based on paragraph 9 of article 212 of Civil Procedure Code of Georgia, disproportionately restricts human right to a fair trial and is unconstitutional with respect to paragraph 1 of the Article 42.

III

Ruling part

Based on subparagraph “f” of the 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”, paragraphs 1 and 2 of article 7, articles 30, 31, 32 and 33 of the Law of Georgia “On Constitutional Legal Proceeding”

THE CONSTITUTIONAL COURT

RULES:

1. The constitutional claim N558 (Citizen of Georgia Iliia Chanturaia V. the Parliament of Georgia) shall be partially upheld and section 9 of Article 212 of the Civil Procedure Code of Georgia, except normative content on adoption of the court ruling about expulsion of the attendant of the hearing, shall be considered null and void with respect to paragraph 1 of article 42 of the Constitution of Georgia.

2. The unconstitutional provision shall be declared invalid from the moment of publishing this Judgment.

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

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

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

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

Composition of the board:

Zaza Tavadze

Otar Sichinava

Lali Papiashvili

Tamaz Tsabutashvili