
LTD. “GRISHA ASHORDIA” VERSUS THE PARLIAMENT OF GEORGIA

N2/3/522,553

Batumi, 27 December 2013

Composition of the Board:

9. Zaza Tavadze – Chairman of the sitting, Judge Rapporteur;

10. Otar Sitchinava – Member;

11. Lali Papiashvili – Member;

12. Tamaz Tsabutashvili – Member.

Secretary of the Sitting: Darejan Chaligava

Title of the Case: Ltd. “Grisha Ashordia” versus the Parliament of Georgia.

Subject of the Dispute:

1. On the Constitutional Claim N522 – Constitutionality of the first paragraph of Article 7³ and the words “From the 1st of January 2012 onwards, Legal entity of private law shall lose the right to recognition of ownership right to land plots in its lawful possession (use)” of Article 7⁴ of the Law of Georgia “On Recognition of Ownership Right to Land Plots in Possession (Use) of Physical Persons and Legal Entities of Private Law” with respect to Articles 14 and 21 of the constitution of Georgia.

2. On the constitutional claim N553 – a) constitutionality of the first paragraph of Article 7³ and the words “From the 1st of January 2012 onwards, Legal entity of private law shall lose the right to recognition of ownership right to land plots in its lawful possession (use)” of Article 7⁴ of the Law of Georgia “On Recognition of Ownership Right to Land Plots in Possession (Use) of Physical Persons and Legal Entities of Private Law” with respect to Article 21 of the constitution of Georgia; b) constitutionality of subparagraph “a” of paragraph 3 of Article 6, the first paragraph of Article 7³ and the first sentence of Article 7⁴ of the law of Georgia “On Recognition of Ownership Right to Land Plots in Possession (Use) of Physical Persons and Legal Entities of Private Law” with respect to Article 14 of the constitution of Georgia.

I

Descriptive Part

83. On 20 January 2012 and 25 March 2013, a constitutional claim (registration N522 and N553) was lodged with the constitutional court of Georgia by Ltd. “Grisha Ashordia”. On 25 January 2012, the constitutional claim and, on 26 March 2013, the constitutional claim N553 was referred to the Second Board of the Constitutional Court for consideration.

84. The matter of deciding about the admissibility of the constitutional claim N522 for the consideration on the merits, the administering sitting of the

Second Board of the constitutional court was held without oral hearing on the 1st March of 2012, and the constitutional claim – on 24 June 2013. With a view to jointly considering the constitutional claims on the merits, by the Recording Notice N2/5/553 of 25 June 2013 of the constitutional court of Georgia, the constitutional claim N553 was combined with the constitutional claim N522 into one case.

85. The grounds for lodging the constitutional claims N522 and N553 with the constitutional court of Georgia are: Article 42 of the constitution of Georgia, subparagraph “e” of the first paragraph of Article 19, subparagraph “a” of the first paragraph of Article 39 of the organic law of Georgia “On the Constitutional Court of Georgia”; paragraph 2 of Article 1, paragraphs 1 of Article 10 of the law of Georgia “On the Constitutional Legal Proceedings”.

86. Pursuant to the first paragraph of Article 7³ of the Law of Georgia “On Recognition of Ownership Right to Land Plots in Possession (Use) of Physical Persons and Legal Entities of Private Law”, “from 1st of July 2011, the fee for recognition of ownership right to land in lawful possession (Use) of legal entities of private Law shall be equaled to the fee for recognition of ownership right to land arbitrarily occupied by legal entity of private law”. Under Article 7⁴ of the same Law, from the 1st of 2012 onwards, legal entity of private law shall lose the right to recognition of land in its lawful possession (use) as well as arbitrarily occupied land. After the given date, it is possible to acquire the ownership right in compliance with the general rule established for privatization of the state property. Pursuant to subparagraph “a” of paragraph 3 of disputed Article 6 of the same Law, for legal entity of private law, the fee for recognition of ownership right to land occupied arbitrarily amounts to normative price applicable for a respective land at the time of demand for every square meter of the land for non-agricultural purposes, and for every hectare of the land for agricultural purposes – hundred times as much annual rate of property tax on the land established by the government of Georgia by the time of demand for recognition of ownership right.

87. It is indicated in the constitutional claims, that Ltd. “Grisha Ashordia” is the legal successor of one person enterprise “Bazalti” and had in its lawful possession (use) the immovable property recorded on its books, but following enactment of the disputed norms, from the 1st of July 2011 the fee for recognition of ownership right to land in its lawful possession (use) was equaled to the fee for recognition of ownership right to land occupied arbitrarily by legal entity of private law, and from the 1st of January 2012, he has completely lost the right to recognition of ownership right and after the given date, acquirement of ownership right is possible in line with the general rule established for privatization of the state property. The Claimant believes that differentiated treatment with respect to legal person according to property sign was determined by the disputed

norms, because by the given disputed norms, the legislator established different requirements, timeframes and taxes towards physical and legal entities of private law wishing the recognition of ownership right. As the Claimant asserts, there is unjustified, unequal treatment in place between physical persons on the one hand, and legal entities of private law, on the other hand, The mentioned comes into opposition with the principle of equality guaranteed by Article 14 of the constitution of Georgia.

88. Under the constitutional claims, the appealed norms also do not conform to Article 21 of the constitution of Georgia, since on the ground of the disputed norms legal persons were deprived of the possibility to register ownership right to land plots, which contradicts with the right to property.

89. On the ground of written request date 02 July 2013 of the Claimant and the written consent dated 30 July 2013 of the Parliament of Georgia, on 09 December 2013, the sitting for consideration of the case on the merits was held without oral hearing.

90. The Respondent – explanatory note submitted by the representative of the Parliament of Georgia, from July 2007 to January 2012, legal entities of private law had sufficient time to recognize ownership right to land plots in their lawful possession (use) through the way different from the legislation in force. The Respondent points out that placing the physical and legal entities in different situation is caused by their different nature: for the purposes of the law of Georgia “On Recognition of Ownership Right to Land Plots in possession (use) of Physical and Legal Entities of Private Law”, they represent substantially unequal subjects and the aim of different treatment was, through the utilization of the land fund in possession of the state, to ensure the economic development of the State, in the conditions, when utilization of the land in possession of the state was not made by physical persons with the intensity similar to legal entities of private law. The abovementioned does not exclude, in case of existence of similar circumstances, the possibility to adopt analogous decision with regard to physical persons. Besides, while establishing the fee for recognition of ownership right, the decisive importance was given to the legal nature of subject owning the immovable property. Accordingly, Article 14 of the constitution of Georgia was not violated.

91. The Respondent indicates that the law of Georgia “On Recognition of Ownership Right to Land Plots in Possession (Use) of Physical Persons and Legal Entities of Private Law” created the possibility to transfer the land in lawful possession or use, also the land under the State ownership occupied arbitrarily, through the recognition of ownership right, to the ownership of physical and legal entities of private law, to utilize the land fund in the State’s possession and to develop the land market. The State facilitated the aspiration of physical and legal

entities of private law to create their own possession, which was manifested in such regulation on property purchase, which stimulated the civil turnover. In addition, it is the State's, as an owner, prerogative to define the form of alienation of the property and after January 2012, gaining the property right to lands under the State's ownership is possible by the general rule established for the privatization of the state property, which contradicts with Article 21 of the constitution of Georgia.

II

Motivational Part

1. In the constitutional claims N522 and 553, the Claimant is a legal entity – solidary liability association “Grisha Ashordia”. Pursuant to Article 45 of the constitution of Georgia, the basic human rights and freedom indicated in the constitution, considering their content, extend also to legal entities. The Claimant demands to check the constitutionality of the disputed norms with respect to Articles 14 and 21 of the constitution of Georgia. The constitutional court of Georgia thinks that the basic right to equality enshrined in Article 14 and the right to property enshrined in Article of the constitution of Georgia, considering their contents, extends also to legal entities.

2. Articles 14 and 21 of the constitution of Georgia protect the two most important and different from each other constitutional value. Accordingly, the constitutional court shall assess the matter of constitutionality of the disputed norm separately.

Constitutionality of the disputed norms with respect to Article 14 of the constitution of Georgia

3. Under Article 14 of the constitution of Georgia, “Everyone is free by birth and is equal before law regardless of race, colour, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, place of residence”. The purpose of Article 14 of the constitution of Georgia is “not to permit unequal treatment of persons being equal in essence and vice versa” (Decision N2/1/473 of 18 March 2011 of the constitutional court of Georgia on the case “Citizen of Georgia Bichiko Tchonkadze and others versus the Ministry of Energy of Georgia”, II-1). As the constitutional court of Georgia explains, “the degree for assuring the equality before the law is an objective criterion for assessing the degree of the supremacy of law restricted in favor to democracy and human rights in the country. Therefore, this principle represents not only the foundation for democratic and rule-of-law based state, but also its goal” (Decision N1/1/493 of 27 December 2010 of the constitutional court of Georgia on the case “Political Unions of Citizens: “The New Rights” and “The Conservative Party of Georgia” versus the Parliament of Georgia”, II-4).

4. Under the practice established by the constitutional court of Georgia, for the possibility to hold deliberations within the scopes of Article 14 of the constitution, in the first place, we should ascertain whether persons to be compared (groups of persons) are equal in essence or not. For this, it is necessary that the given persons, based on this or this content, be fallen in the similar category, in the analogous circumstances and must be equal in essence with due regard to a specific situation or legal relation.

5. In the constitutional claims N522 and 553, the Claimant Ltd “Grisha Ashordia” indicates that the disputed norms are discriminatory, because the legislator, for recognition of ownership right, established different requirements, timeframes and taxes with respect to physical and legal entities of private law wishing to recognize their ownership right. The Claimant asserts that the unequal treatment is thus present, on the one hand, among physical and on the other hand, among legal entities of private law. Stemming from all the aforementioned, the constitutional court must ascertain whether or not physical and legal entities of private law are subjects equal in essence within the scopes of the relations regulated by the disputed law.

6. Pursuant to Article 3 of the law of Georgia “On Recognition of Ownership Right to Land Plots in Possession (use) of Physical and Legal Entities of Private Law”, this law defines the basic conditions for recognition of ownership right to land in lawful possession (use), as well as land occupied arbitrarily and the authorities of the bodies that represent the State in the process of recognition of ownership right.

7. The law of Georgia “On Recognition of Ownership Right to Land Plots in Possession (use) of Physical and Legal Entities of Private Law” considers as subjects for recognition of ownership right both physical persons and legal entities of private law. Stemming from the abovementioned, physical and legal entities of private law are in analogous situation and participate in identical legal relation with identical status – a person interested in recognition of ownership right.

8. Following establishment of subjects being equal in essence, the constitutional court should establish, whether or not there is unequal treatment in place. The Claimant indicates that unequal treatment is expressed by regulating different conditions, timeframes and taxes set forth for recognition of ownership right.

9. Under subparagraph “a” of paragraph 3 of Article 6 of the disputed law, much higher fee for recognition of ownership right is established with respect to legal entities of private law than this is done with respect to physical persons. The regulation determined by the first paragraph of Article 7³ of the law is analogous, which is aimed at only legal entities of private law and equalizes, from the 1st of July 2011, the fee for recognition of their ownership right to the fee for recognition of ownership right to land plots occupied arbitrarily, whereas under the first

sentence of Article 7⁴ of the disputed law, from the 1st of January 2012, legal entities of private law unlike physical persons shall lose the right to recognition of ownership.

10. The differentiated treatment lies in separating one part – legal entities of private law – from the common circle of subjects recognizing ownership right and in imposing different conditions, fees and timeframes upon them.

11. As it is established, there is unequal treatment of persons being equal in essence at hand. Accordingly, this amounts to interference with the sphere protected by the right to equality guaranteed by Article 14 of the constitution of Georgia. According to the interpretation provided by the constitutional court, “The standards for assessing constitutionality of the interference with the sphere protected by the right to equality are not homogenous. The norm which defines the differentiation is associated with classic, specific signs or/and is characterized by high intensity, is subject to the constitutional scrutiny within the scopes of “strict test”, through the use of the principle of proportionality (Decision N2/1/473 of 18 March 2011 of the constitutional court of Georgia on the case “Citizen of Georgia Bichiko Tchonkadze and others versus the Ministry of Energy of Georgia”, II-6). Stemming from the abovementioned, the constitutional court should establish: a) whether or not the differentiation is related to classic signs; b) whether or not the differentiation is characterized by high intensity.

12. The Claimant indicates that the right to equality violates with regard to legal entity of private law, according to an organizational affiliation. The constitutional court explains that the sign of organizational affiliation does not belong to the classic signs for differentiation laid down in Article 14 of the constitution of Georgia. Besides, the differentiation according to a classic sign is not discerned in the case under consideration. Therefore, in the given case, unequal treatment is not related to any classic characteristic indicated in Article 14 of the constitution of Georgia.

13. While assessing the disputed norm constitutionally and legally, it is important to establish the intensity of differentiation. “Criteria for assessing the differentiation will be different in every specific case, stemming from nature of the differentiation, the sphere regulating it. However, in any case, decisive factor will be to what extent persons being equal in essence will be placed in significantly different conditions, that is, how distinctively the differentiation will distance persons being equal in essence from equal possibility to participate in specific public relation’ (Decision N1/1/493 of 27 December 2010 of the constitution court of Georgia on the case “Political Unions of Citizens “The New Rights” and “The Conservative Party of Georgia” versus the Parliament of Georgia”, II-5).

14. The disputed norms do not considerably distance the persons being equal in essence from equal conditions for participation in specific public relation.

In particular, the law of Georgia “On Recognition of Ownership Right to Land Plots in Possession (use) of Physical and Legal Entities of Private Law” did not completely deprive legal entities of private law to make recognition of ownership right to lands in their lawful possession. Although, the given law determines the timeframe for recognition of ownership right and sets out certain fee for legal entities of private law, but the given subjects had reasonable possibility to enjoy the right granted by the given law from 2007 to January 2012. Accordingly, on the basis of the analysis of factual circumstances of the case under consideration, the constitutional court of Georgia concludes that the intensity of differentiation does not attain such degree as to assess inequality by applying “the strict test”.

15. Therefore, it was established that unequal treatment in the given case is not related to the classic sign of differentiation and is not characterized by high intensity. Under the practice established by the constitutional court of Georgia, in case if the differentiation emanating from the disputed norm is not related to the classic signs and the interference is not characterized by high intensity, the court assesses the constitutionality of the disputed norm within the scopes of “rational differentiation test”, under which: “a) corroboration of the rationality of differentiated treatment is sufficient, among them, when maximum reality, inevitability or necessity of differentiation is evident ; b) existence of the real and rational connection between the objective cause of differentiation and the result of its operation” (Decision N1/1/493 of 27 December 2010 of the constitutional court of Georgia on the case “Political Unions of Citizens “The New Rights” and “The Conservative Party of Georgia”, II-6).

16. In the case under consideration, we should ascertain the need for differentiation established by the disputed norm and whether or not there is real and rational connection between objective cause of differentiation and the result achieved by operation of the disputed norms.

17. First of all, it should be checked what purpose pursues the differentiation provided for by the disputed norms. The State by adopting the law of Georgia “On Recognition of Ownership Right to Land Plots in Possession (use) of Physical and Legal Entities of Private Law” encouraged the private initiative and stimulated physical and legal entities of private law to utilize the land resources in the State’s possession.

18. It is indicated in the explanatory note on the above-mentioned law, that despite the years-long use by citizens of land plots in the State’s possession, registration of the right on these lands was related to a wide range of difficulties and existing circumstance conditioned hindrance of the grows of income part of the budget, because the impossibility to identify these land plots and ownership right to them in the Public Registry excluded the possibility to transform them into object subject to the taxation. Through the mentioned measure, the State aimed at

utilizing the land fund and promoting development of land market, also, placing the factual use of land in legal framework.

19. Introduction of the disputed norms, which was followed by differentiation of physical and legal entities of private law, must be considered as a measure carried out by the State, which should have accelerated the process of recognition of the ownership of land by legal entities of private law.

20. Following establishment of objective causes of the disputed norms, it should be ascertained to what extent the necessity for differentiation established by the disputed norms exists and whether or not the regulation is logically linked with the aims pursued.

21. The legislative history on the disputed norms demonstrates that after the statically and unlimitedly granting of the right to recognition of ownership, the State restricted in time the realization of the given right and created more efficient background for achieving the purposes sought, because the granting of the right unlimitedly in time gave rise to the threat that if the granted right was not timely realized, the possibility to effectively achieve the purposes would have been lost, to which the granting of the right to recognition of ownership over the land in the State's possession lawfully occupied by the persons serves.

22. In order to avoid the abovementioned, the legislator has set out phased legislative measures with one legislative package, in particular, by the law of Georgia N3889-II of 07 December 2010 "On the Changes and Amendments to the law of Georgia "On Recognition of Ownership Right to Land Plots in Possession (use) of Physical and Legal Entities of Private Law". In the first place, from the 1st of July 2011, the fee for recognition of ownership was increased for legal entities, and from the 1st of January 2012, the right to recognition of ownership in relation to them was completely annulled.

23. The abovementioned legislative measure stimulated legal entities to timely exercise the recognition of ownership right during the period before the increase in fee, and afterwards during the period before the right to recognition of ownership was annulled.

24. Naturally, the State had analogous need with regard to physical persons as well, however, as compared to physical persons, legal persons had more material and non-material resources for exercise the procedure of obtaining the land in their possession. Besides, the introduction of similar restrictions for physical persons might have led to grave social conditions for a certain circle of persons.

25. Legal Persons, considering the peculiarities of organizational-legal forms, have common signs. The major characteristics of these specific subjects of law: unification of resources for achieving the defined goals, limitation of the liability, organizational capacity, better coordination and etc. Each of these char-

acteristics places them in certain material or organizational advantageous position with respect to physical persons. Their creation occurs only for the reason that physical persons are unable to achieve defined commercial or non-commercial goals separately and with individual resources. In other case, save for few exceptional cases, physical persons also enjoy full freedom to individually and independently carry out the same commercial or non-commercial activities.

26. Moreover, land plots to be transferred into ownership might have vitally significant importance for certain category of physical persons. For instance, the law, together with the lands for other purposes, considers lands in use of households occupied for the residential purposes and lands occupied for the purpose to satisfy the other minimum requirements for existence as land plots to be transferred into possession of physical persons.

27. Bearing in mind the aforementioned factors, the exercise of the procedure on recognition of ownership to land plots in limited timeframes would be much lighter burden for legal persons than for physical persons.

28. Stemming from all the aforementioned, the constitutional court infers that inequality in the case under consideration is based on objective causes and there is rational linkage between the means employed and the legislative purposes pursued. Accordingly, the disputed norms do not contradict with the right to equality enshrined in Article 14 of the constitution of Georgia.

29. Thus, the constitutional claim N522 should not be upheld in the part of the requirement of the claim, which deals with the constitutionality of the first paragraph of Article 7³ of the law of Georgia “On Recognition of Ownership Right to Land Plots in Possession (use) of Physical and Legal Entities of Private Law” and the words “from the 1st of 2012 onwards, legal entity of private law shall lose the right to recognition of ownership right to land in its lawful possession (use)” of Article 74 of the same Law with respect to Article 14 of the constitution of Georgia. Also, the constitutional claim N553 should not be upheld in the part of the requirement of the claim, which deals with the constitutionality of subparagraph “a” of paragraph 3 of Article 6 of the law of Georgia “On Recognition of Ownership Right to Land Plots in Possession (use) of Physical and Legal Entities of Private Law” and the first paragraph of Article 73 of the same law and the first sentence of Article 74 of the same Law with respect to Article 14 of the constitution of Georgia.

Constitutionality of the disputed norms with respect to Article 21 of the constitution of Georgia

30. The constitutionality of the first paragraph of Article 7³ and the words ““from the 1st of 2012 onwards, legal entity of private law shall lose the right to recognition of ownership right to land in its lawful possession (use)” of Article 7⁴ of the law of Georgia “On Recognition of Ownership Right to Land Plots in

Possession (use) of Physical and Legal Entities of Private Law” with respect to Article 21 of the constitution of Georgia is also disputed in the constitutional claims N522 and N553. The Claimant believes that the disputed norms unconstitutionally restrict his property right.

31. Article 21 of the constitution of Georgia enshrines the universal right of property, its purchase, alienation and hereditary succession. According to the assessment of the constitutional court, “the right to property is a natural right, without which existence of democratic society is impossible” (Decision N3/1/512 of 26 June 2012 of the constitutional court of Georgia on the case “Citizen of Denmark – Heike Kronquist versus the Parliament of Georgia”, II-32). The right to property is the linchpin for development of modern democratic society, which the market economy and stable civil turnover rests upon. Article 21 of the constitution of Georgia, on the one hand, ensures the property as the constitutional-legal guarantee of the institute, and on the other hand, constitutes a basic right of an individual. The constitutional court repeatedly construed that “the right to property is not only an elementary cornerstone of existence for an individual, but also it ensures individual’s freedom, and adequate realization of his ability and possibilities, and to lead a life with his own responsibility. All of this lawfully preconditions private initiatives of an individual in the sphere of economy, which facilitates development of economic relations, free entrepreneurship, market economy, and normal, stable civil turnover (Decision N1/2/384 of 02 July 2007 of the constitutional court of Georgia on the case “Citizens of Georgia – Davit Jimshelashvili, taniel Gvetadze and Neli Dalalashvili versus the Parliament of Georgia”, Ii-5).

32. Within the scopes of the case under consideration, the constitutional court of Georgia must construe the sphere protected by the basic right to property and must determine whether or not the interference with the protected sphere occurred, what form does the interference have and whether or not it is in conformity with constitutional legal standards provided for by Article 21.

33. In the first place, it should be found out whether or not the legal good is infringed, which includes “property” envisaged by Article 21 of the constitution of Georgia and protection of which the given constitutional provision serves.

34. The fact is noteworthy that ltd “Grisha Ashordia” did not obtain the ownership on the land plot, in particular, recognition of ownership right did not occur under the procedure prescribed by the legislation and the mentioned land plot is recorded in the State’s possession.

35. Besides, in the light of the content of the disputed regulation, to what extent ltd “Grisha Ashordia”, as legal persons of private law, who had a land plot owned by the State in its lawful possession, acquired the ownership right for the purposes of Article 21 of the constitution of Georgia should be established. The

court will assess existing normative situation within the scopes of the normative content disputed by the Claimant.

36. Ltd. “Grisha Ashordia” confirms the fact of existence in its lawful possession with documents, wherein it is indicated that the given association was a user of the land plot under the State’s ownership. The constitutional court explains that in the case under consideration, transfer of the land plot under the State’s ownership to the use of legal entities of private law does not create legal linkage of a subject with the property so much firm as to have the given circumstance assessed as already acquired property for the purposes of Article 21 of the constitution of Georgia.

37. Accordingly, the Claimant cannot dispute over the land plot as a property in his possession.

38. The Claimant also speaks about those buildings-edifices that are erected on this land plot. The issue of buildings-edifices erected on land plot in lawful possession is not regulated by the disputed norms. The right status existing in the given property is defined by the civil code of Georgia and other normative acts, which are not a subject of the dispute in the given case.

39. Under the interpretation of the constitutional court of Georgia, “the notion of property has an autonomic content and it is not confined with the right to property on only physical things, some other right and benefit, which produces the possession, demand of compensation for the damage of ownership nature, also the values of ownership, among them, the right to demand, which is produced based on the legitimate expectation and preconditions the effective use of property of an individual, may be considered as the property and the right to property” (Decision N1/5/489-498 of 30 July 2010 of the constitutional court of Georgia on the case “Citizens of Georgia – Otar Kvenetadze and Izolda Rcheulishvili versus the Parliament of Georgia”, Ii-2).

40. The constitutional court of Georgia construes this or that constitutional provision by employing the constitutional principles. “Although, constitutional principles do not lay down basic rights, but the appealed normative act is also subject to revision with relation to the fundamental principles of the constitution, in connection with individual norms of the constitution and in this sense, the discussions should be held within the single context” (Decision N2/2-389 of 26 October 2007 of the constitutional court of Georgia on the case “Citizen of Georgia Maia Natadze and others versus the Parliament and the President of Georgia”, II-6).

41. On the case under consideration, the court holds that Article 21 of the constitution should be interpreted in connection with the principle of legal security. The principle of legal security emanates from the principle of rule-of-law based state. The constitutional court repeatedly construed in its several decisions one of the most important elements of legal security – the principle

of certainty, which enshrines the guarantees of foreseeability of the legislation. The principle of legal trust is another important constituent part of the legal security.

42. The principle of legal trust serves enhancement of the trust of citizens towards the applicable law. It is impermissible to shake the trust of addressees of the law by unjustified and frequent modifications to the rights granted by the law. Citizen should have the feeling of trust with respect to the privileges accorded to him by the law. The legislation should perform the function assuring personal freedom. Individuals must be able to carry out their personal, professional and economic activities within the stable legal frames. Essentially undefined and uncalculated, unreliable legal development gives birth to the feeling of uncertainty, which hinders personal development of an individual. Legal security is an important prerequisite for personal freedom of an individual.

43. The constitutional court of Georgia holds that, considering the principle of legal security, the legitimate expectations towards which individuals show the trust must be protected. There is a high degree of the trust of individuals towards the rights granted by the law. Unjustified shaking of the mentioned norms will be negatively reflected towards the trust of law and legal security.

44. The legitimate expectation arisen from only the legitimate ground is protected by Article 21 of the constitution of Georgia. In order to consider the expectation as legitimate and respectively, protected by Article 21 of the constitution of Georgia, it should have a legal ground and should represent the demand emanating from specific legal relation. Article 21 of the constitution of Georgia does not create the right to unconditional demand for material use from the state. Here it implies a case, when the demand for material use rests upon a specific, genuine legal ground.

45. In the given case, the Claimant Ltd. "Grisha Ashordia" believes that the disputed regulation violates his property right to the degree that on the one hand, the fee for recognition of ownership right to land plot in his lawful possession was increased, and on the other hand, he lost the right to recognition of ownership from the 1st of January 2012. Stemming from all the aforementioned, in the case under consideration, a person lost (faced complications) the right to recognition of ownership, in particular, his right to obtain, with certain benefits, the land plot owned by the state was restricted.

46. In 2007, the Parliament of Georgia adopted a law "On Recognition of Ownership Right to Land Plots in Possession (use) of Physical and Legal Entities of Private Law". On the basis of the given law, physical persons and legal entities of private law was granted with the right, under the prescribed rule and by presence of established preconditions, to recognize the ownership right to certain land plots being under state ownership.

47. By adopting of the abovementioned law, with a view to utilizing the land fund in State's possession and facilitating development of the land market, the State established the regime of the state property containing certain benefits for privatization of land plots. Besides, the wording of the law applicable in 2007 did not contain the reference about timeframes for recognition of ownership. Under the initial wording of the given law, physical persons and legal persons of private law were granted with the right to recognize ownership with indefinite timeframe. Demonstration of such will by the State, on the basis of certain preconditions, naturally created the expectation about granting the right to recognition of ownership over land plots – the state property.

48. Physical persons and legal entities of private law, which had certain connection with the abovementioned land plots and already were in the legal relations defined by the law, created expectation that if they were subjects of the mentioned law and complied with the requirements established by the law, by the prescribed rule, could acquire the ownership on land plots in State's possession. Besides, the given law comprises the mechanisms that stipulate the effective realization of recognition of ownership right. The expectation, which rests upon the legitimate ground and emanates from this specific legal relation, must be considered as the legitimate expectation, which is secured by Article 21 of the constitution of Georgia.

49. As it was mentioned above, recognition of ownership right to land plots in State's possession falls within the sphere protected by Article 21 of the constitution of Georgia. The Claimant Ltd. "Grisha Ashordia" indicates in his constitutional claim that his right to property is violated due to the fact that, on the one hand, the fee for recognition of ownership right to land plot was increased, and on other hand, from the 1st of January 2012, he completely lost the right to recognition of ownership. The constitutional standard for assessing interference with the basic right of property considerably depends on the circumstance, which form of interference with the right was applied by the State. Stemming from the structure of Article 21 of the constitution of Georgia, constitutional-legal scrutiny of the interference with the right to property is carried out according to the nature of interference. Accordingly, the constitutional court should define what type of interference is present in the case under consideration.

50. Article 21 of the constitution of Georgia acknowledges two basic type of interference with the right – restriction of the right to property and deprivation of property. The grounds for possible restriction of the right to property are determined by paragraph 2 of Article 21, and constitutional preconditions of deprivation of property is established by paragraph 3 of Article 21 of the constitution of Georgia.

51. In order to establish whether or not deprivation of property and standards related to it are relevant in the case under consideration, it should be defined

whether or not regulation established by the disputed norms amounts to deprivation of property for the purposes of paragraph 3 of Article 21 of the constitution of Georgia.

52. The constitutional court repeatedly interpreted the sphere regulating paragraph 3 of Article 21 of the constitution of Georgia. Pursuant to the practice established by the constitutional court, “the institute of deprivation of property provided for by paragraph 3 of Article 21 is characterized by distinctively expressed formal characteristics. Any instances, that imply the loss of property against the will of a person, are not consistent with this notion. The deprivation of property implies expropriation, conditions and rule of which are established by the law of Georgia “On Rules for Deprivation of Property for Urgent Public Necessity” (Decision N2/1-370,382,390,402,405 of 18 May 2007 of the constitutional court of Georgia on the case “Citizens of Georgia Zaur Elashvili, Suliko Mashia, Rusudan Gogia and others and the Public Defender of Georgia versus the Parliament of Georgia”). Also, the decision N2/155 of the 1st of April 2003 of the constitutional court of Georgia on the case “Akaki Saghirashvili versus the Parliament of Georgia” is noteworthy, in which the court explained: “the rule of deprivation of property applies in incidents when it occurs from the part of appropriate competent subjects (the State borides) in order to perform the public tasks... the special importance is attached to ownership component of property by paragraph 3 of Article 21 of the constitution of Georgia. For relations of deprivation of property it is characterized that the State not only establishes the legal regime for deprivation, but rather it directly or indirectly participates in specific process of deprivation”.

53. The law of Georgia “On Organization of Ownership Right to Land Plots in Possession (use) of Physical and Legal Entities of Private Law” regulates relations pertaining to recognition of ownership right of land plots in State’s possession. Application of the mentioned law does not fall within the legal regime for deprivation of property from the part of the State and signs for the exercise of expropriation are not discerned. Accordingly, the rule of conduct established by the disputed norms may not be assessed as deprivation of property and the standards established by paragraph 3 of Article 21 of the constitution of Georgia are not applied. Stemming from the abovementioned, the constitutional court will not assess constitutionality of the disputed norm with respect to paragraph 3 of Article 21 of the constitution of Georgia.

54. The constitutional court deems that restriction of the legitimate expectation with any forms, annulment of the right granted by the law amounts to restriction of the right to property. Respectively, in the case under consideration, increase of the fee for recognition of ownership and afterwards, annulment of the right to recognition of ownership must be assessed by the standards laid down by paragraph 2 of Article 21 of the constitution of Georgia.

55. According to paragraph 2 of Article 21 of the constitution of Georgia, restriction of the right to property is permissible for the purposes of the pressing social need in the cases determined by the law and in accordance with a procedure established by law, in such a way that as not to violate the essence of the right to property.

56. The constitutional court interprets that in the case under consideration, there is such specifically protected sphere present as the legitimate expectation for acquisition of property. In particular, individual's right, stemming from his legitimate expectation, to demand from the State recognition of ownership right. In such case, when there is present the legitimate expectation for acquiring the ownership right to the benefits granted by the State, the constitutional court's approach and constitutional-legal standards for restricting the right will be different and specific.

57. Granting of separate state benefit, despite the legitimate expectation of beneficiaries, depends on certain economic resources. The legislator enjoys wide margins of appreciation in disposition of economic resources and in development of social-economic policy of the county. Accordingly, the constitutional court, in similar case, will establish violation of the right to property, when the legislator rudely goes beyond the scopes of its discretion and when unjustified, uncorroborated restriction of the legitimate expectation is obvious.

58. The significant criterion for constitutionality of the restriction of property is existence of the pressing social need. In particular, restriction of the right must serve the pressing social need, its existence provides the legitimacy for restricting the right to property. Stemming from the abovementioned, in constitutional-legal scrutiny of restriction of the right to property the central issue is as to which factors preconditioned the pressing social need for adoption of the disputed norm.

59. Under the interpretation of the constitutional court, "the constitution does not provide strict differentiation of "the pressing social need". Definition of the content of this notion in individual case is a prerogative of the legislator in a democratic State and its content is changeable according to actual political or social-economic challenges" (Decision N3/1/512 of 26 June 2012 of the constitutional court of Georgia on the case "Citizen of Denmark – Heike Kronquist versus the Parliament of Georgia", II-59).

60. In assessing the pressing social need, the specificity of relation regulated by the disputed norms should be taken into account. Through the law of Georgia "On Recognition of Ownership Right to Land Plot in Possession (use) of Physical and Legal Entities of Private Law", the State aimed to utilize the land fund and promote development of land market, also place the factual use of land into legal framework.

61. Introduction of the disputed norms should be considered as the measure undertaken by the State in order to accelerate the process of recognition of ownership by legal persons of private law. The disputed norms aimed to identify the land plots in possession (use) of physical and legal entities of private law, also the land plots occupied arbitrarily.

62. According to the position held by the Parliament of Georgia, the need for changes was conditioned by the fact that legal entities of private law really used specific land plots, but since these land plots were not registered, the tax administration was complicated.

63. Timely identification of such land plot was also conditioned by the need for effective management and use of state property. The law of Georgia “On the State Property”, which regulates concerning the management, use and transfer of state property, does not extend to the cases foreseen by the law of Georgia “On Recognition of Ownership Right to Land Plots in Possession (use) of Physical and Legal Entities of Private Law”, respectively, it is impossible to privatize or use the mentioned land plots in any other forms in accordance with the general procedure. The State has the public interest to timely identify those land plots that have been already utilized and towards which privatization in accordance with the general procedure is not permissible. Without the aforementioned, the effective administration of state property will be complicated.

64. The pressing social need is closely linked with social-economic challenges of the country. Tax administration and effective management of state property represent the important public interest of Georgia. Stemming from all the aforementioned, the constitutional court concludes that in the case under consideration, the disputed norm serves the interests of the pressing social need.

65. As it was mentioned above, stemming from the specificity of the legitimate expectations, in such case, the discretion of the legislative authorities is high. Accordingly, the constitutional court, in assessing such types of restrictions, will not employ strict constitutional standards. In the case under consideration, it is obvious that the disputed norms were adopted for achievement of certain public purposes. Simultaneously, the regulation established by the norms is logically linked with the purposes pursued and represents the means for their achievement. The circumstance should be noted that legal entities of private law had reasonable possibility to use the right granted by the state within the period from 2007 up to 2012. The regulation established by the disputed norms shall not be considered as being opposed to the principle of trust and does not represent unjustified and uncorroborated restriction of the legitimate expectation for acquisition of property. Accordingly, there is no contradiction at hand with Article 21 of the constitution of Georgia.

66. Stemming from all the aforementioned, not to uphold the constitutional claims N522 and N553 in the part of the requirement of the claim, which deals with the constitutionality of the first paragraph of Article 7³ and the words “from the 1st of 2012 onwards, legal entity of private law shall lose the right to recognition of ownership right to land in its lawful possession (use)” of Article 7⁴ of the of the law of Georgia “On Recognition of Ownership Right to Land Plots in Possession (use) of Physical and Legal Entities of Private Law” with respect to Article 21 of the constitution of Georgia.

III

Resolutive Part

Having been guided by subparagraph “f” of the first paragraph and paragraph 2 of Article 89 of the constitution of Georgia; subparagraph “e” of the first paragraph of Article 19, paragraphs 2 of Article 21, paragraph 3 of Article 25, paragraphs 2, 3 and 5 of Article 27¹, subparagraph “a” of paragraph 1 of Article 39, paragraphs 2, 4, 7 and 8 of Article 43, paragraphs 1 and 4 of Article 43 of the organic law of Georgia “On the Constitutional Court of Georgia”; paragraphs 1 and 2 of Article 7, paragraph 4 of Article 24, Articles, Articles 30, 31, 32 and 33 of the law of Georgia “On the Constitutional Legal Proceedings”,

The Constitutional Court of Georgia

rules:

30. No to uphold the Constitutional Claim N522 (Ltd “Grisha Ashordia” versus the Parliament of Georgia) with regard to constitutionality of the first paragraph of Article 7³ and the words “from the 1st of 2012 onwards, legal entity of private law shall lose the right to recognition of ownership right to land in its lawful possession (use)” of Article 7⁴ of the of the law of Georgia “On Recognition of Ownership Right to Land Plots in Possession (use) of Physical and Legal Entities of Private Law” with respect to Articles 14 and 21 of the constitution of Georgia.

31. Not to uphold the constitutional claim N553 (Ltd “Grisha Ashordia” versus the Parliament of Georgia) with regard to constitutionality of (a) the first paragraph of Article 7³ and the words “from the 1st of 2012 onwards, legal entity of private law shall lose the right to recognition of ownership right to land in its lawful possession (use)” of Article 7⁴ of the of the law of Georgia “On Recognition of Ownership Right to Land Plots in Possession (use) of Physical and Legal Entities of Private Law” with respect to Article 21 of the constitution of Georgia; (b) with regard to the constitutionality of subparagraph “a” of paragraph 3 of Article 6, the first paragraph of Article 7³ and the first sentence of Article 7⁴ of the law of Georgia “On Recognition of Ownership Right to Land Plots in Possession (use) of Physical and Legal Entities of Private law” with respect to Article 14 of the constitution of Georgia.

32. The present judgment shall come into force from the moment of its public delivery at the hearing of the Constitutional Court.

33. The present judgment is final and not subject to appeal or revision.

34. Copies of the Judgment of the Constitutional Court of Georgia shall be sent to the parties, the President of Georgia, the Supreme Court of Georgia and the Government of Georgia.

35. The Judgment of the Constitutional Court of Georgia shall be promulgated in the “Legislative Herald of Georgia” within 15 days.

Member of the Board: Zaza Tavadze,

Otar Sitchinava,

Lali Papiashvili,

Tamaz Tsabutashvili.