CITIZEN OF GEORGIA GIORGI GACHECHILADZE VERSUS THE PARLIAMENT OF GEORGIA.

N2/1/524 **Batumi, 10 April 2013**

Composition of the Board:

1. Zaza Tavadze – Chairman of the sitting, Judge Rapporteur;
2. Otar Sitchinava – Member;
3. Lali Papiashvili – Member;
4. Tamaz Tsabutashvili – Member.

Secretary of the Sitting: Darejan Chaligava

Title of the Case: Citizen of Georgia Giorgi Gachechiladze versus the Parliament of Georgia.

Subject of the Dispute: Constitutionality of paragraphs 1 of Article 57^{10} of the law of Georgia "On Environment Protection" with respect to paragraphs 3 and 4 of Article 37 of the constitution of Georgia and constitutionality of paragraph 4 of the same Article with respect to paragraph 5 of Article 37 of the constitution of Georgia.

Participants to the case: the Claimant – Giorgi Gachechiladze and representative of the Claimant – Nodar Apkhadze; Respondent - representative of the Parliament of Georgia –Tamar Khintibidze; The witnesses – Mamuka Ivaniashvili, Chief Specialist of Court Disputes Division of the Legal Department of the Ministry of Environment Protection of Georgia, Neli Korkotadze – Head of Department for Fossil Management at the Agency of Natural Resources, the legal entity of public law under the Ministry of Energy and Natural Resources of Georgia and Konstantine Khachapuridze, Deputy Head of the same Department.

I

Descriptive Part

1. On 10 April 2012, a constitutional claim (registration N524) was lodged with the constitutional court of Georgia by a citizen of Georgia Giorgi Gachechiladze. On 13 April 2012, the constitutional claim was referred to the Second Board of the Constitutional Court with a view to deciding about the admissibility of the case for the consideration on the merits.

2. By the Recording Notice N2/3/524 of 28 December 2012 of the constitutional court of Georgia, the constitutional claim was admitted for consideration on the merits.

3. The sitting of the Second Board of the constitutional court of Georgia for consideration of the case on the merits with an oral hearing was held on 01 March 2013.

4. The grounds for lodging the constitutional claim N524 with the constitutional court of Georgia are: subparagraph "f" of the first paragraph of Article 89 of the constitution of Georgia; subparagraph "e" of the first paragraph of Article 19, Article 31, 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 and Article 16 of the law of Georgia "On the Constitutional Legal Proceedings".

5. Pursuant to the disputed norms of the law of Georgia "On Environment Protection", on the bases of an application made by an interested person, it is possible to conclude an agreement between the Ministry of Energy and Natural Resources of Georgia and this person, under which all actions committed/carried out by the person in the sphere of use of environment protection and natural resources within the period foreseen by the agreement shall be deemed as legitimate. Simultaneously, within the period envisaged by the agreement, it is inadmissible to impose civil or/and administrative liability, among them, penalty or/and compensation for the damage incurred, also any other obligations, duties by the State or local-self government body against the person.

6. Under the claim, the human right to live in healthy environment is enshrined and the state obligation to ensure environment protection and the rational use of natural resources are determined by paragraphs 3 and 4 of Article 37 of the constitution of Georgia. Moreover, according to paragraph 5 of the same Article, everybody has the right to receive complete, objective and timely information about a state of environment.

7. As the Claimant asserts, the agreement foreseen by the first paragraph of Article 57^{10} of the law of Georgia "On Environment Protection" includes both the period prior to conclusion of the agreement as well as the agreement is possible to be concluded with regard to actions to be carried out by the person in the future, which, in their turn, may bring harm to the environment. In his opinion, despite that in practice, conclusion of the agreement takes place only with regard to the period prior to the conclusion; the applicable wording of the disputed norm does not exclude the possibility that any period of time can be a subject of the agreement. Stemming from this, any physical or legal person has the opportunity to inflict the damage upon environment and was not held responsible. Accordingly, not only constitutional right to live in healthy environment, but also the state obligation to ensure environment protection and the rational use of natural resources are violated by the disputed norm.

8. At the sitting for the consideration on the merits, the Claimant further referred that the disputed norm, even if it might imply the possibility to conclude an agreement only on actions performed in the past, it, in any case, would anyway have a touch with the state of environment protection in the future. In his opinion,

actions carried out in the sphere of environment protection and the use of nature, do not represent one-off acts. They are prolonged in time and their consequences will be reflected on the future. Respectively, by conclusion of this agreement, a person is given certain "indulgence" for a crime committed by him. Stemming from this, existence of the institute of agreement in the sphere of environment protection is generally inadmissible and it contradicts with the constitution of Georgia.

9. The Claimant also thinks as problematic "paragraph 3 of Article 57^{10} of the law of Georgia "On Environment Protection", under which "from the day of conclusion of an agreement, within the period envisaged by an agreement, civil or/and administrative liability, among them, penalty or/and compensation for the damage incurred, also any other obligations, duties with respect to the State or local-self government body shall not be imposed to a person for an action committed/carried out in the sphere of environment protection and the use of natural resources, except for the instances, when an agreement is annulled". In the opinion of the Claimant, the right to live in healthy environment guaranteed by paragraph 3 of Article 37 of the constitution of Georgia also implies the state obligation to ensure environment protection and the rational use of natural resources. The Claimant believes that every individual's right to live in healthy environment is guaranteed by paragraphs 3 of Article 37 of the constitution of Georgia, no matter whether the damage was inflicted upon a specific person or not. Consequently, on the basis of the disputed norm, the State considers as legal all the actions that endanger the environment, which amounts to violation of paragraphs 3 and 4 of Article 37 of the constitution of Georgia.

10. At the sitting for consideration on the merits, the Claimant indicated that in case of conclusion of an agreement, imposition of both civil and administrative liabilities as well as criminal liability upon a person shall be excluded. As the Claimant asserts, pursuant to the disputed norm, the State is prohibited to inspect a person's activities during the period envisaged by the agreement. Accordingly, if the State cannot exercise control, inquiries and study the matter, it is impossible to establish the culpability of a person and hold him/her responsible of any kind. Stemming from this, despite the fact that subparagraph 3 of Article 57^{10} of the law of Georgia "On Environment Protection" does not explicitly mentions about the release from criminal liability, its applicable content implies this.

11. The Claimant indicates that on the ground of paragraph 4 of Article 57^{10} of the law of Georgia "On Environment Protection", the State removes the obligation, within the period envisaged by an agreement, to inspect actions committed/carried out in the sphere of environment protection and the use of natural resources. If the State is not authorized to exercise an inspection over activities

of persons involved in the sphere of the use of nature, it will be deprived of the possibility to obtain complete information about the state of environment. This automatically implies that citizens will not be either able to effectively exercise the right to receive a complete and objective information about the state of environment guaranteed in paragraph 5 of Article 37 of the constitution of Georgia.

12. Stemming from all the aforementioned, the Claimant thinks that the disputed norms contradict with paragraphs 3, 4 and 5 of Article 37 of the constitution of Georgia.

13. The Respondent at the sitting of the case for consideration on the merits admitted the constitutional claim. As he clarified, based on the disputed norms, all actions committed by a person is deemed as legal, accordingly, the State refuses to impose a legal responsibility upon a person for a crime committed in the sphere of environment protection and natural resources. The Respondent agrees with the position held by the Claimant and believes that conclusion of an agreement envisaged by the disputed norms implies granting certain 'indulgence" to a person and any person is given the possibility to carry out illegal actions, arbitrarily use the natural resources and inflict a damage upon environment, which contradicts with the basic right to live in healthy environment guaranteed in Article 37 of the constitution.

14. According to assertions of the Respondent, nevertheless the fact that under an agreement envisaged by the disputed norm, the obligation to pay compensation is directly imposed upon a person using the natural resources, the State is deprived of the possibility to inspect activities of this person, to reveal and control illegal actions and violations existing in this sphere. Stemming from this, the competent bodies do not have the possibility to receive information about a state of environment, which implies that they will fail to provide the interested persons with complete and objective information about the state of environment, which contradicts paragraph 5 of Article 37 of the constitution of Georgia.

15. The Respondent pointed out that the legitimate purpose for introduction of the disputed norm could not be the public necessity, because if a person runs activities in this sphere in good faith, he will not be required to pay compensation. Respectively, there is not legitimate purpose for introducing the disputed norms. The Respondent also indicated that the disputed norms rule out imposition of both civil and administrative liabilities as well as criminal liability against a person within the period envisaged by an agreement. Consequently, the disputed norms contradict with the constitution.

16. The Respondent additionally indicated that a draft law is being considered at the committee hearings of the Parliament of Georgia, which provides for annulment of the disputed norms and after the mentioned changes take legal force, agreements shall not be concluded under this rule.

17. Mamuka Ivaniashvili, Chief Specialist of Court Disputes Division of the Legal Department of the Ministry of Environment Protection of Georgia, the witness invited to the case explained how the national report about the state of environment is developed. As the witness clarified, on the basis of Article 14 of the law of Georgia "On Environment Protection", the Minister or the Ministry of Environment Protection every three year approves the National Report on the state of environment. According to the applicable legislation respective state bodies and legal entities of public law, within 2 months period from the request of the Ministry of Environment protection, are obliged to submit the information which is necessary for development of this report. Besides, specific procedures and actions as to how a National report should be drafted are established under the Decree of the President of Georgia. The report is comprised of several sections, in particular, the section of air protection, water resources, protection of animating environment, and environment impact of economic sectors and management of environment protection. The administrative bodies are defined with regard to each component, which are responsible for providing this information. The public also participates in drafting the report, and respectively any persons may submit his opinions with regard to these matters. After the information is processed, the given report is approved and is published in printing; also it is available at the official website of the Ministry.

18. The witness also noted that in case of presence of an agreement, the Ministry is prohibited to inspect the person, with who it concluded an agreement. Accordingly, it will be unable to obtain the information with regard to specific violations existing in the sphere of environment protection.

19. Neli Korkotadze – Head of Department for Fossil Management at the Agency of Natural Resources, the legal entity of public law under the Ministry of Energy and Natural Resources of Georgia and Konstantine Khachapuridze, Deputy Head of the same Department, the witnesses invited to the case indicated that pursuant to the law of Georgia "On Licenses and Permissions", persons holding a license and permission, who carry out activities in the sphere of environment protection, are accountable, in particular, fossil users once a year have to submit information about their activities to the agency, and permission-holders, also once a year are obliged to submit the information with reference to air and water. The witnesses mentioned that in the conditions of operation of the disputed norms, they do not have the possibility to check the submitted information. Besides, even during the period of inspection, it is almost impossible to identify, a specific violation was committed within the period envisaged by an agreement or after it, because of which the receipt of objective information is complicated.

20. As the witnesses explained, the disputed norms do not permit the control body to obtain reliable, corroborated and complete evidences, which impedes

collection of complete and objective information on the environment and its dissemination to the population. In addition, the witnesses consider that the disputed norm is problematic as far as, while concluding an agreement, a person does not have an obligation to disclose what type and degree of damage he/she has inflicted upon environment, accordingly, the aforementioned may become the ground for corruptive deal, leading to non-transparent process, which will bring harm to environment and violates basic human rights.

21. The witnesses further noted that the National Agency for Environment under the Ministry of Environment Protection is tasked to exercise monitoring, which basically implies observation on background state of environment. Besides, it is also problematic that even in case of the complete exercise of such monitoring, without fundamental inspection, it is difficult to establish as to which enterprise specifically affects on the qualitative norms of environment, for instance, if enterprises are located close to one other, based on surface observation it is impossible to establish which of them is to blame for contamination of environment. Stemming from this, the witnesses believe the applicable wording of the disputed norms cannot bring positive results for the effective exercise of environment protection-driven activities.

II

Motivational Part

1. The Claimant contests constitutionality of paragraphs 1 and 3 of Article 57^{10} of the law of Georgia "On Environment Protection" with respect to paragraphs 3 and 4 of Article 37 of the constitution of Georgia. Pursuant to the disputed norms, it is possible to conclude an agreement between the Ministry of Energy and an interested person, under which, within the period envisaged by an agreement, an interested person is released from civil or/and administrative liabilities for actions committed/carried out by him in the sphere of environment protection and the use of natural resources with respect to the State or local self-government bodies. Within the period envisaged by an agreement, a person is released from paying compensation for the damage, from fulfillment of any other obligations or from the obligation to pay the duties in return for fulfilling requirements (payment of certain amount of money or/and fulfillment of other obligations) of an agreement. The Claimant believes that the given rule contradicts with his constitutional right to live in healthy environment. He notes that an agreement envisaged by the disputed norms may be concluded both for the past period and the future period alike. Accordingly, a person is given the possibility to inflict indefinite amount of harm to the environment, which will be regarded as a legal act and can turn out to entail catastrophic consequences for environment.

2. According to paragraph 3 of Article 37 of the constitution of Georgia, "Everyone shall have the right to live in healthy environment and enjoy natu-

ral and cultural surroundings. Everyone shall be obliged to care for natural and cultural environment". The given constitutional provision, on the one hand, enshrines the basic human right to live in a healthy environment, and on the other hand, establishes the obligation of each member of the public to care for natural and cultural environment. Stemming from this, the court must construe the content of Article 37 of the constitution in the light of these two important components. Simultaneously, in determining the content and scopes of the constitutional right, we have to be guided by the standard of individual's access to healthy environment. The given constitutional provision cannot provide protection of an individual's right to live in comfortable for him/her or/and esthetically acceptable environment and demand from the State to ensure the aforementioned. The purpose of regulation of paragraphs 3 and 4 of Article 37 of the constitution is that everyone must care for natural environment and demand from the state to protect it. Increasing deterioration of environmental conditions and problems related to it made the need for constitutional protection of healthy environment inevitable. The text of the constitution of Georgia refers that "Everyone shall have the right to live in healthy environment" and rules out the possibility that paragraphs 3 and 4 of Article 37 of the constitution of Georgia shall be deemed as the constitutional norm-principles aimed at environment protection only. Bearing in mind the content, purpose and spirit of paragraphs 3 and 4 of Article 37 of the constitution of Georgia, it is doubtless that the constitution strives for establishing the high standard for the right of healthy environment and regards it as the basic human rights. Placing of ecological rights into constitutional-legal sphere is particularly important for sound, effective functioning and coordination of the environmental mechanisms of the State's accountability, access to information on environment protection, public participation and other mechanisms for environment protection. By establishing the right to live in a healthy environment, the constitution of Georgia confirms and enshrines special importance of sustainable ecological development in the order of values.

3. In interpreting the constitutional provisions that regulate the living in a healthy environment, we have to take into account the content and purpose of paragraph 4 of Article 37 of the constitution of Georgia. Paragraph 3 of Article 37 of the constitution of Georgia aims at prevention, as much as possible of threats existing in real time to natural habitat and of damage inflicted upon environment and or/and their rectification. As opposed to the abovementioned, paragraph 4 of Article 37 of the constitution deals with the need of protection of the interests of future generations and refers that the use of nature should be ensured so that ecological interests be balanced in accordance with economic interests, in parallel with sustainable development of the country, in order to preserve the environment safe and healthy to a human being. Accordingly, with regard to restriction of en-

vironmental impact, the sphere of regulation of paragraphs 3 and 4 of Article 37 may be not only prevention of the treats existing today to healthy environment (threats altering the status-quo of environment), but also protection from future threats.

4. In order to assess the constitutionality of the disputed norm, the content and impact of the institute of an agreement established by the law should be defined, which the disputed norms may have on environment. Pursuant to the first paragraph of Article 57^{10} of the law of Georgia "On the Environment Protection", "on the basis of an application made by an interested person, it is possible to conclude an agreement between the Ministry of Energy and Natural Resources of Georgia and this person, under which all actions committed/carried out by a person in the sphere of use of environment protection and natural resources within the period foreseen by the agreement shall be deemed as legitimate", and according to paragraph 3 of the same Article, "from the day of conclusion of an agreement, within the period envisaged by an agreement, civil or/and administrative liability, among them, penalty or/and compensation for the damage incurred, also any other obligations, duties with respect to the State or local-self government body shall not be imposed to a person for an action committed/carried out in the sphere of environment protection and the use of natural resources, except for the instance, when an agreement is annulled". The given norms regulate the grounds for release of interested persons from responsibility envisaged by the law for the commission of actions prohibited by the Georgian legislation in the sphere of environment protection and the use of natural resources, and the responsibility measures themselves are determined by different legislative acts.

5. Pursuant to the first paragraph of Article 57^{10} of the law of Georgia "On Environment Protection", "the responsibility for violation of the Georgian legislation in the sphere of environment protection and the use of natural resources is determined by the legislation of Georgia". Paragraph 2 of the same Article indicates that "infringer of the law, when imposed the liability, is not exempt from paying the damage inflicted upon the environment, according to the prescribed rule and amount". Stemming from the abovementioned, with the purpose to respond to the commission of a crime in the sphere of environment protection and the use of natural resources, the two cumulatively operating mechanisms are determined by the State, in particular, on the one hand, the liability foreseen by the law is awarded to the infringer, and on the other hand, the infringer is obliged to pay compensation for the damage inflicted upon the environment by paying the amount of money or/and with a view to rectifying the damage inflicted upon the environment, through carrying out certain actions. Whilst by concluding an agreement, an interested person, through paying the state compensation, is exempt from application of the both forms of the mentioned influence (the agree-

ment might envisage other obligation to be fulfilled by an interested person). It is noteworthy that the Claimant does not contest about how correctly and effectively the prohibitions, respective liability measures prescribed in this sphere are regulated and how sufficiently are the mechanisms envisaged by the legislation for securing his right to live in a healthy environment. The Claimant find the circumstance problematic that the first paragraph and paragraph 3 of Article 57^{10} of the law of Georgia "On Environment Protection" establish the rule for exemption from the liabilities of the interested persons. Accordingly, the constitutional court should assess the constitutionality of the disputed norm in this context.

6. Paragraphs 3 and 4 of Article 37 of the constitution of Georgia lay down two types of obligations to the State: 1) the State is obliged, within the scopes of its active actions, upon implementation of economic, infrastructural and other types of projects or any other measures, to take into account and reduce as much as possible the negative environmental impact as a result of its activities (negative obligation); 2) the State should protect the environment from the damages inflicted by private persons on the environment (positive obligation). Within the scopes of the given dispute, the Claimant does not make reference to the infringement of the State's negative obligation and neither it is discerned from the disputed norms, that they in any manner regulate the measures and the matters of environment protection to be taken by the State, in case of the damage incurred to the environment as a result of an active action. Respectively, in assessing the constitutionality of the disputed norms, it should be established whether the State's positive obligation to protect the environment from negative influence by private persons is violated or not.

7. While defining the content of the right to live in healthy environment, attention also should be attached to the words of paragraph 3 of Article 37 of the constitution: "Everyone shall have the right ….enjoy natural and cultural surroundings. Everyone shall be obliged to care for natural and cultural environment". Stemming from the abovementioned, paragraphs 3 and 4 of Article 37 of the constitution of Georgia enshrine the right of an individual to natural environment, in particular, the environment that exists independently, without human impact and establish all obligations for taking care of it. The purpose of protection of paragraphs 3 and 4 of Article 37 of the constitution is not to establish the State obligation or authority, at its discretion, as a result of consultation with the public or any other forms, to define what is the best environment for human living and afterwards, to attempt to create it through active interference with it. Conversely, the given provisions of the constitution declare the living environment as constitutional value, which exists without human interference. The purpose of paragraph 3 of Article 37 of the constitution is to create the environment that is free as much as possible from human influence. Respectively, the State is obliged not to

give the third person the possibility to make immeasurable impact on the environment. This should be demonstrated by prohibition of certain actions of persons in the sphere of environment protection and by imposition of respective liabilities for commission of these actions. Stemming from paragraphs 3 and 4 of Article 37 of the constitution, the State is obliged to create such legal system that ensures existence of reasonable expectation for a person that in case of the damage of the environment, adequate measures for legal influence shall be applied against any person. The State is obliged to create such legal mechanisms that will perform the preventive function against actions aimed at damaging the environment. The Claimant indicates that as a result of operation of the disputed norms, the given obligation of the State was breached. In his opinion, the existing institute of an agreement represents certain "indulgence", through which, an interested person "purchases" the legitimacy for "killing the nature". In his explanation, the disputed norm, in the sphere of environment protection and natural resources, stimulates the perpetration of a crime and, accordingly, contradicts with paragraphs 3 and 4 of the constitution of Georgia.

8. Pursuant to the law of Georgia "On Environment Protection", an interested person files an application to the Ministry of Energy and Natural Resources of Georgia requesting conclusion of an agreement. On the basis of the given application, a decision on conclusion an agreement with him/her is either made or declined. Paragraphs 1 and 3 of Article 57^{10} of the law of Georgia "On Environment Protection" refers that after the conclusion of an agreement, no civil and administrative liabilities are imposed on a person for committing a crime within the period envisaged by an agreement. The disputed norm establishes the possibility to conclude an agreement in the conditions when the legislation, with respect to determination of the issue of choice for period of agreement, does not foresee restriction of the parties. The disputed norm does not directly indicate the period of an agreement, whether it is the time, when a crime has been already committed, or the period exempt from the liability, envisaged by an agreement may suppose the time in the future. Stemming from the abovementioned, the law does not restrict state bodies to conclude a disputed agreement on the release of a person from the responsibility both for infringements committed in the past period and for actions to be perpetrated in the future.

9. Simultaneously, the circumstances to be taken into account that an agreement is concluded not with regard to specific action of an interested person, but rather with regard to the period of his activity, to indefinite extent of possible infringements. The law does not establish any type of obligation of the state bodies to inspect, prior to conclusion of an agreement, offences committed by an interested Person within the period envisaged by an agreement and to make a decision as a result of the inquiries about the extent of damage inflicted upon the

environment and the character of an offence. Besides, according to paragraph 4 of Article 5710 of the law of Georgia "On Environment Protection", "it is inadmissible to inspect an action committed/carried out by a person in the sphere of environment protection and the use of natural resources within the period envisaged by an agreement". Stemming from the abovementioned, we can conclude that the law provides the possibility to conclude an agreement in such a way that it shall not be known, specifically what extent of possible offence committed by an interest person is deemed as legal. Besides, investigations of the offences committed allegedly by him are not made after the conclusion of an agreement either. Stemming from the abovementioned, the law allows, in return for the state compensation, the possibility for the release of a person from the liability for the offences committed by him in indefinite quantity.

10. As it has been already mentioned, stemming from paragraphs 3 and 4 of Article 37 of the constitution, the State is obliged, with the purpose of environment protection, to rule certain prohibitions and the legal responsibility mechanisms assuring the compliance with these prohibitions. Although, while choosing respective sanctions against this or that offences, the State enjoys wide margins of appreciation, but the sanction should not be applied in such a way as to lose its aim and purpose. The major purpose for prohibition of a certain action by the law and determination of the degree of a sanction for such action is to prevent an offence. Conclusion of an agreement on the release of a person from the liability within the period in the future has the effect of factual abrogation towards him of the prohibitions established in the sphere of environment protection and natural resources. An interested person loses his feeling that the liability might be imposed upon him in return for the damaged inflicted upon the environment. He is granted the freedom to act without hindrance in the sphere of environment protection and the use of natural resources. Accordingly, the norms of the legislation of Georgia determining the content of certain offences lose their major function with regard to an interested person, of preventing the negative influence on the environment. The Claimant precisely called encouragement of the commission of an offence as the major problem of conformity of the disputed norm with the constitution.

11. Paragraphs 3 and 4 of Article 37 of the constitution undoubtedly aim to prevent the granting a person with such freedom of action. The court share the argumentation provided by the Claimant that as a result of conclusion of an agreement, the prohibitions prescribed by the legislation lose "restraining effect" with respect to the interested persons. Granting a person with wide freedom for impacting the environment comes into conflict with the positive obligation of the State to ensure the environment protection for preserving the environment healthy and safe for human beings. Stemming from the abovementioned, the right

guaranteed by paragraphs 3 and 4 of Article 37 of the constitution of Georgia is restricted.

12. It is noteworthy that any law that might allow certain environmental impact, a priori, should not be considered as unconstitutional. "Restriction of the majority of the rights is inevitable, because their realization often gives rise to the conflict of values… when the conflict of interests is inevitable, then necessity for their harmonization, legal balance arises" (Decision N1/1/477 of 22 December 2011 of the constitutional court of Georgia on the case "The Public Defender of Georgia against the Parliament of Georgia"). Like other human rights, the realization of the right to live in healthy environment entails the contact and certain kind of competition with different constitutional rights or legitimate state interests. Exactly at this time, the necessity to strike the reasonable balance by the State arises. "The regulation selected by the legislator is reasonable when its action ensures cohabitation, co-realization of collusive rights, aims at striking the reasonable balance between the rights. At the same time, when it is impossible to avoid the conflict between the rights and with the purpose of resolving the collision, restriction of the constitutional right by the authorities becomes inevitable, the least stricter form for restriction of the right should be applied" (Decision N2/482,483,487,502 of 18 April 2011 of the constitutional court of Georgia on the case "Political Union of Citizens "Movement for United Georgia", political union of citizens "The Conservative Party of Georgia", citizens of Georgia – Zviad Dzidziguri and Kakha Kukava, the Georgian Young Lawyers Association, citizens – Dachi Tsaguria and Jaba Jishkariani, the Public Defender of Georgia versus the Parliament of Georgia", II-32).

13. The State development, economic and technological progress, in most cases, automatically causes the increase in harmful influence upon the environment. Promotion of economic development is one of the most important tasks of the State authorities, respectively, the State frequently has to give its regard to economic and ecological factors and balance them. Paragraph 4 of Article 37 of the constitution makes reference exactly to this balance, under which, the State ensures "the rational use of natural resources, sustainable development of the country in compliance with economic and ecological interests of the public". In order to ensure the environment save for human health, the protection of ecology is possible to frequently collide with the sphere regulating the freedom of entrepreneurship. To ascertain, to what extent the State, for the purpose of economic development of the country, can permit environmental impact, is one of the most difficult legal problems for practical realization of basic human right to live in healthy environment, towards which it is impossible to develop general and universal approach. In every specific case, it should be established through confrontation of the interests, whether the impact of the environment

on this or that forms amounts to violation of the human right to live in healthy and safe environment.

14. Conclusion of an agreement on the liability of a person, in most cases, serves the disclosure of specific infringements and assurance of the State's adequate response to these infringements. In general, disclosure the offences and response to them is the important legitimate purpose. In order to achieve this purpose, restriction of the human right to live in safe and healthy environment, under certain conditions, may even be constitutionally and legally justified. However, in the given case, disclosure of the infringements may not be considered as the legitimate purpose for adoption of the disputed norms, because an agreement is concluded in such a way that respective competent bodies are not imposed an obligation to find out what infringement an interested person has committed. Simultaneously, an agreement may be concluded on recognition of the actions as legal that a person has not committed yet. In the given case, it is difficult to determine specifically what purpose is pursued by establishment of such regulation by the State, moreover, under the conditions, when the Respondent acknowledged the constitutional claim N524 and indicated that there is no legitimate purpose for introduction of the disputed norms.

15. Even if there were certain legitimate aims for existence of the institute of an agreement determined by the law, under the conditions of the applicable wording of the disputed norms, it will be impossible to prove that the reasonable balance between the restriction of the human right to live in safe and healthy environment and the positive effects of operation of the disputed norms is respected. In the given case, an agreement is concluded in such a way that it is unknown what extent of the damage an interested person has inflicted upon the environment and, moreover, it is impossible to define what damage will be incurred in the future. Accordingly, it is impossible to speak about existence of the reasonable balance under the conditions, when the damaged inflicted upon healthy environment is possible to be immeasurably wide. Even the fairest law-enforcer will fail to reasonably assess the proper compensation for the damage inflicted upon the environment under the conditions, when he is not aware about the extent of the damage. In the given case, it is impossible for the State to prove that as a counterbalance for permitting environmental impact, it protects commensurable goods. Respectively, the reasonable balance between the restriction of the right established by the disputed norm and the positive result achieved by its adoption is disrupted. By adopting the disputed norms, the State violates the obligations prescribed by paragraphs 3 and 4 of Article 37 of the constitution of Georgia of provision of the environment protection and the rational use of natural recourse as to ensure the safe and healthy environment for human living. Stemming from the aforementioned, paragraphs 1 and 3 of Article 5710 of the law of Georgia "On

Environment Protection" contradicts with paragraphs 3 and 4 of Article 37 of the constitution of Georgia.

16. The Claimant also contests the constitutionality of paragraph 4 of Article 57^{10} of the law of Georgia "On Environment Protection" with respect to paragraph 5 of Article 37 of the constitution of Georgia, under which, everyone shall have the right to receive a complete, objective and timely information as to a state of the environment. In order to resolve the issue of constitutionality of the abovementioned disputed norm, the essence and scopes of the sphere protected by paragraph 5 of Article 37 of the constitution of Georgia should be defined. Simultaneously, the content of disputed regulation and its link with paragraph 5 of Article 37 of the constitution should be established.

17. Paragraph 5 of Article 37 of the constitution is the special case of the right to receive the information by a person. It generates the State obligation to provide any interested person with the information about on the state of environment available at its hand. Besides, as opposed to the constitutional rights establishing the access to information, paragraph 5 of Article 37 determines the State's positive obligation to constantly collect and analyze the information about the state of environment, in order that, if required, the public's access to such information shall be secured. It is evident that these two obligations are organically intertwined, because without gathering and processing of this type of information, effective realization of the human right is impossible.

18. Except for the constitution of Georgia, the right to access to the information on environment is enshrined in many international documents. For instance, United Nations 1992 Rio de Janerio Declaration "On Environment and Development" and the 1998 Aarhus Convention "On Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters". The mentioned international documents impose an obligation upon the state authorities to make the information on environment protection accessible for the public.

19. Within the scopes of the dispute under consideration, the constitutional court does not face the need to exhaustively interpret paragraph 5 of Article 37 of the constitution of Georgia. The content and scopes of this right shall be done following the development of the practice of the constitutional court, the Claimant indicates that within the period envisaged by an agreement concluded in the sphere of environment protection and the use of natural resources, the State and local-self governmental bodies are prohibited to inspect actions committed by an interested person in this sphere. Accordingly, the State is left without any legal mechanism to completely collect and process the information about a state of environment. Respectively, in order to settle the existing dispute, the second element of the right of access to information about a state of environment is relevant,

which establishes the State's obligation to collect and process the information available about the state of environment. The right of access to the information about the state of environment constitutes a special element of the right to safe and healthy environment. Accordingly, the content of the information about the state of environment should be established within the context of the right to safe and healthy environment.

20. The right of access to the information about a state of environment is especially important in the light of public participation in the sphere of the environment protection. Accordingly, the information collected about the state of environment should satisfy the substantial minimum which is necessary for realizing the public participation in the sphere of environment protection. Within the scopes of paragraph 5 of Article 37 of the constitution, the State is obliged to collect the information that concerns the state of environment and those factors that exert an influence upon it. In the first place, the information about the constituent elements of environment – the information about air, atmosphere, water, soil, earth, landscape and state of natural objects, biological diversity and its components, genetically modified organisms and interaction of these elements should be considered as being such factors. Also, it is important to have access to the information about state policy, plans, programs and legislation, which exert influence or may exert influence on the state of environment.

21. The analysis of the legislation of Georgia demonstrates that bodies of the public authorities exercise the monitoring of the state of environment in two main directions. On the one hand, the state bodies reveal the infringements committed in the sphere of environment protection and the use of natural resources, and respectively, respond to them. Within the scopes of the mentioned monitoring, a person carrying out activities in the sphere of environment protection and natural resources is inspected and, in case of disclosure of infringements, the measures of responsibility is applied against him. For instance, the functions of the structural subdivision of the legal entity of public law "The Agency of Natural Resources" include the disclosure and prevention of administrative offences on the basis of the authorities conferred upon it by the Code of Administrative Offences of Georgia and other normative acts. They also include the exercise of examination and inspection without hindrance in the extraction sites of natural resources in this sphere, in any time round-the-clock, by the procedure prescribed by the law.

22. In parallel with the abovementioned, other state bodies undertake the studies and survey about the state of environment not for disclosure of infringement of a specific person, but rather for the study of the state of environment directly. For instance, legal entity of public law "The National Agency of Environment" under the Ministry of Environment Protection of Georgia exercises

the hydrometeorological, geological assessment and evaluation of the qualitative, factual state of environment, preparation and dissemination of the respective informational materials through the territory of Georgia. Also, the Agency prepares the information about existing and forecast hydrometeorological, geodynamic processes and the state of environment in river basins and water bodies, in the territorial waters of the Black Sea, in the continental shelf and in special economic zones throughout the territory of Georgia. It also exercise the monitoring of hydrological, meteorological, geologic, the Black Sea's hydro and lytodynamic, environmental (atmospheric air, surface and the Black Sea waters, soils) contamination, natural radiation background and biodiversity. The data are gathered and disseminated at national and international levels under the prescribed procedure. The main objective of the abovementioned activities is to ensure availability of the information about the state of environment to the public.

23. With a view to ensure access to the information about environment protection, stemming from the legislation of Georgia, a wide range of measures are carried out. In this sense, the National Report on the state of environment is an important mechanism. With a view to keeping the public informed, the given Report is approved once every three years by the Minister of Environment Protection of Georgia. The main objective of the National Report on the state of Environment is to ensure effective realization of the right of access to the information about environment protection as prescribed by paragraph 5 of Article 37 of the constitution of Georgia.

24. Under the Decree N389 of 25 June 1999 of the President of Georgia "On the Rule of Development of National Report on the State of Environment", the National Report encompasses the information about the state of constituent elements of the environment. For example, the state of atmospheric air quality, climate change, surface fresh waters and ground-waters should be considered in the National Report. The Report also deals with environmental impact factors, such as: economic-social factors, transport, industry and energy. Through the Report, the public is given the possibility to receive the information about the matters relating to environmental policy, researches, regulations and control. The National Report on the state of Environment constitutes a certain institute, which ensures collection of the information about the state of environment and its availability to the public. Besides, collection of the information according to the spheres is divided among various bodies of the state authorities. They are obliged, within a period prescribed by the law, to submit relevant information to the Ministry of Environment Protection of Georgia, which coordinates collection of the information and is responsible for development of the National Report. The Analysis of normative base existing in this sphere demonstrates that for the purposes of the Report, the information is collected through the analysis of the state of environ-

mental policy. As a result of the analysis of the legislation, it was not discerned that while studying the state of environment, the state bodies exercise in any form inspection of an entrepreneur. Collection of the information about environment takes place as a result of the research of air, water, soil and etc, the constituent elements of the environment directly.

25. The survey of the state of environment except for maintaining the public informed is possible to has many other purposes. For example, discovery of contamination of the environment, respective reaction to it and etc. Although, for the purposes of paragraph 5 of Article 37 of the constitution, the issue of collecting the information about the state of environment itself is interesting. And discussions about what measures should be carried out by the State after it has revealed the facts of contamination or any other damages inflicted upon environment, go beyond the sphere regulated by paragraph 5 of Article 37 of the constitution. It is important that the sphere protected by paragraphs 3, 4 and 5 of Article 37 of the constitution be separated from one another. Paragraph 5 of Article 37 of the constitution extends its protection to only accessibility of the information about the state of environment, whereas the matters relating to contamination or any other damage inflicted upon environment may be the subject of regulation of paragraphs 3 and 4 of Article 37 of the constitution. Accordingly,

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matter of accessibility of the information to the public, and not directly the context of imposition of the liability for the damage inflicted upon environment, is important.

Protection" establishes that "it is inadmissible to inspect an action committed\ carried out by a person in the sphere of environment protection and the use of natural resources within the period envisaged by an agreement and imposition of civil or\and administrative liabilities, among them, penalty or\and compensation of the damage, also any other obligations, duties by the State or\and local self governmental bodies, except for the case, when an agreement is abrogated". According to the mentioned norm, inspection of an action committed\carried out in the sphere of environment protection and the use of natural resources is

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"On Environment Protection" must not be considered as the norm prohibiting the use of any means to inspect a person. In this case, inspection of an action is restricted within the context of imposition of civil or\and administrative liabilities. The disputed norm does not prohibit inspecting a person with a view to receive the information about the state of environment. Accordingly, conducting

of such type of inspection is possible even under the conditions of the disputed norm, if such competence of a relevant administrative body is envisaged by the legislative norms regulating the relevant sphere.

27. In the constitutional claim N524, the Claimant does not call into question the circumstance as to how correctly the legislator has defined the issues to be studied while collecting the information about the state of environment and measures to be implemented in this sense. Position held by the Claimant does not make obvious that he considers the applicable system for collection of the information about the state of environment being inconsistent with the constitution. Paragraph 4 of Article 57^{10} of the law of Georgia "On Environment Protection" is disputed to the extent that the Claimant believes that it prevents the collection of the information about the state of environment, practical realization of those legislative mechanisms, which should ensure the complete enjoyment of the right guaranteed by paragraph 5 of Article 37 of the constitution. Accordingly, while deciding the dispute under consideration, the court does not face assessment of the conformity of the issue with the constitution, which relates to the rule on development of National Report, within its scopes, processing and disseminating of the information or any other legislative mechanisms for collecting the information about the state of environment and providing it to the public. Stemming from the claim requirement, violation of the right protected by paragraph 5 of Article 37 of the constitution might have been present in case, if the disputed norm could restrict the authority of the state bodies to collect the information about the state of environment and make it accessible to the public. For deciding the constitutionality of the disputed norm, the fact is important that the applicable legislative system establishes the collection of the information about the state of environment as a result of the survey of the environment, and the disputed norm does not relate and respectively does not diminish the area of freedom for operation of the state bodies in acquiring such type of information.

28. Stemming from all the aforementioned, paragraph 4 of Article 57^{10} of the law of Georgia "On Environment Protection" does not impede the practical exercise of those legislative mechanisms, which operate within the context of collection of the information about the state of environment. Furthermore, the mentioned disputed norm does not at all regulate the issues about the receipt of the information about the state of environment by the State bodies. Paragraph 4 of Article 57^{10} of the law of Georgia "On Environment Protection" does not hinder fulfillment of the positive obligations of the State existing in terms of acquiring the information about the state of environment, respectively, it does not contradicts with paragraph 5 of Article 37 of the constitution of Georgia and the constitutional claim should not be upheld in this part of the requirement of the claim.

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 and 8 of Article 21, paragraphs 2, 4, 7, 8 of Article 43, the first paragraph of Article 45 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 30, 31, 32 and 33 of the law of Georgia "On the Constitutional Legal Proceedings",

The Constitutional Court of Georgia

r u l e s :

1. To partially uphold the constitutional claim N524 (citizen of Georgia Giorgi Gachechiladze versus the Parliament of Georgia) and to recognize as unconstitutional paragraphs 1 and 3 of Article 57^{10} of the law of Georgia "On Environment Protection" with respect to paragraphs 3 and 4 of Article 37 of the Constitution of Georgia.

2. Not to uphold the constitutional claim N524 (citizen of Georgia Giorgi Gachechiladze versus the Parliament of Georgia) in the part of the requirement of the claim, which deals with the recognition of paragraph 4 of Article 57^{10} of the law of Georgia "On Environment Protection" as unconstitutional with respect to paragraph 5 of Article 37 of the constitution of Georgia.

3. To declare the unconstitutional norms as invalidated from the moment of promulgation of the present decision;

4. The present decision shall take legal effect from the moment of its public delivery at the sitting of the constitutional court;

5. The present decision shall be final and shall not be subject to appeal or revision;

6. Copies of the present decision shall be sent to the parties to the case, the president of Georgia, the government of Georgia and the supreme court of Georgia;

7. The present decision shall be published in "the Legislative Herald of Georgia" within a period of 15 days.

Members of the Board: Zaza Tavadze,
Otar Sitchinava,
Lali Papiashvili,
Tamaz Tsabutashvili.