
**CITIZENS OF RUSSIA – OGANES DARBINIAN,
RUDOLF DARBINIAN, SUSSANNA JAMKOTSIAN
AND CITIZENS OF ARMENIA – MILENA BARSEGHIAN
AND LENA BARSEGHIAN
V. THE PARLIAMENT OF GEORGIA**

N2/3/540

Batumi, September 12, 2014

Composition of the Board:

Zaza Tavadze – Chairman of the Hearing;
Otar Sichinava – Member;
Lali Papiashvili – Member, Judge Rapporteur;
Tamaz Tsabutashvili – Member.

Secretary of the Hearing:

Darejan Tsaligava.

Title of the Case:

Citizens of Russia – Oganés Darbinian, Rudolf Darbinian, Sussanna Jamkotsian and Citizens of Armenia – Milena Barseghian and Lena Barseghian v. the Parliament of Georgia.

Subject of the Dispute:

Constitutionality of paragraph 7 of Article 22 and of paragraphs 2 and 3 of Article 22¹ of the Law of Georgia “On General Education” with respect to Article 14 and paragraphs 1 and 3 of Article 35 of the Constitution of Georgia.

I

Descriptive Part

1. On August 6, 2012 a Constitutional Claim (registration No.540) was lodged with the Constitutional Court of Georgia by citizens of Russia – Oganés Darbinian, Rudolf Darbinian, Sussanna Jamkotsian and citizens of Armenia – Lena and Milena Barseghians. The Constitutional Claim was referred to the Second Board of the Constitutional Court of Georgia on August 9 2012. Preliminary session of the Second Board of the Constitutional Court on the issue of admissibility of the Constitutional Claim No.540 was held without oral hearing on June 28 2013. Pursuant to the recording notice No.2/6/540 dated November 5, 2013 Constitutional Claim No.540 was considered admissible for consideration on the merits. Hearing on the merits was held on December 9 2013.

2. The legal basis for submission of Constitutional Claim No.540 is paragraph 1 of Article 42 of the Constitution of Georgia, subparagraph “f” of paragraph 1 of Article 89 and subparagraph “e” of paragraph 1 of Article 19 of the Organic Law of Georgia “On Constitutional Court”, subparagraph “a” of

paragraph 1 of Article 39 and Articles 15 and 16 of the Law of Georgia “On Constitutional Legal Proceedings”.

3. Paragraph 7 of Article 22 of the Law of Georgia “On General Education” defines the circle of people whose vouchers are fully funded by the State. These people are: citizens of Georgia; persons with neutral IDs or neutral travel document; foreign citizens living abroad who have the statute of a compatriot; citizens of foreign countries or persons without citizenship, whose right to general education is exercised on the basis of international treaties and agreements of Georgia; as well as those aliens, towards whom the principle of reciprocity applies. Paragraphs 2 and 3 of Article 22¹ of the same Law prescribe procedure for obtaining standard vouchers by aliens and persons without citizenship, pursuant to which, a prerequisite for obtaining a voucher is deposition by a person of a specific sum with the treasury account of the State budget.

4. The Constitutional Claim notes that the Claimants are citizens of Russia and Armenia living in the city of Akhalkalaki who have been asked to pay fee for education because they are not citizens of Georgia and their right to general education is not considered under any international treaty or agreement of Georgia. The principle of reciprocity does not apply to them either. This is evidenced by the letter sent by the head of the Legal Issues Department of the Ministry of Education and Science of Georgia to the parent of one of the Claimants, which notes that since Sussanna Jamkotsian is citizen of Armenia Article 22¹ of the Law of Georgia “On General Education” applies to her. Consequently, the Claimants believe that they are subject to regulation of the disputed provisions, their Constitutional Claim satisfies requirements of the law and there are no grounds to refuse admissibility of the Claim for consideration on the merits.

5. Pursuant to the Claimants the disputed provisions are discriminatory; they prescribe differentiated treatment based on national identity, origin, language and status. Namely a regulation pursuant to which foreign citizens and persons without citizenship are subject to different legal treatment if their right to general education is not subject to an international treaty or agreement and if principle of reciprocity does not apply, is discriminatory.

6. The Claimants point out that the State is obliging one group of aliens to pay fee for education, while same obligation does not extend to citizens of Georgia and other categories of foreigners who likewise want to pursue general education which is fully funded by the State budget. As per Claimants’ contentions, by prescribing obligation of payment to one group of foreigners the State differentiates them from citizens of Georgia and other groups of foreigners. The Claimants assert that subject to differentiation is a pupil of an educational institution who is at the elementary, basic and secondary stages of education.

7. For the purposes of State funding of general education the pupils are divided into the citizens of Georgia, persons with neutral IDs or neutral travel documents, foreigners with the status of a compatriot, those citizens of foreign countries or persons without citizenship whose right to general education is

executed on the basis of international treaties and agreements of Georgia, as well as those foreigners, towards whom the principle of reciprocity applies and those pupils who do not fall under any of the above categories. Consequently, the Claimants believe that there is no difference between the pupils of educational institutions other than their civic belonging to the State. At the same time, the Claimant party identifies citizenship with nationality.

8. In addition, the Claimants state that the disputed provisions put in unequal position citizens of only those countries, whose right to general education is not subject to international treaty or agreement of Georgia and is not subject to the principle of reciprocity. Consequently, the Claimants believe that the differentiation is based on citizenship, because the legislator determines entitlement to funding of education based on one's civic affiliation with a certain State. Therefore, as per Claimants' contention, the disputed provisions lead to discrimination on the basis of citizenship.

9. The Claimants assert that persons with the status of a compatriot will always have possibility to take advantage of free general education in Georgia, irrespective of whether the State of their residence has the same system of funding as Georgia towards representatives of their citizenship. While another person in the same position, who, for example, possesses citizenship of the same State as that of a person with the status of compatriot, will not be entitled to free general education for the sole reason that he/she does not have the similar origin. Therefore, Claimants argue that existence of the disputed provisions lead to differentiation based on a characteristic envisioned by Article 14 of the Constitution of Georgia – origin.

10. Besides, the Claimants note that pursuant to subparagraph "b" Article 3 of the Law of Georgia "On Compatriots Living Abroad and Diaspora Organisations", second precondition for obtaining the status of a compatriot is belonging of the native language of a person of this status to Georgian-Caucasian languages. Consequently, an alien kid, whose native language belongs to a different group of languages, but is otherwise in the same condition as a foreigner speaking Georgian-Caucasian language, is not entitled to free education on the basis of linguistic belonging. For this reason, the Claimants state that the disputed provisions differentiate people on the basis of characteristic envisioned in Article 14 of the Constitution of Georgia - language.

11. According to the Claimants, the disputed provisions differentiate people on one additional ground. Namely, pursuant to the disputed provision, the differentiation is based on whether one has a status of a compatriot. If a person possesses this status, he/she is entitled to funding from State budget, but if he/she does not have this status, no such privilege is given. The Claimants therefore assert that the disputed provisions differentiate people based on their status, which though not directly referred to in the Constitution, derives from the spirit of general right of equality.

12. The Claimant indicates that pursuant to paragraph 1 of Article 35 of

the Constitution of Georgia, everyone has the right to and freedom of choice of education. Therefore, the term “everyone”, refers to all people, irrespective of their civic belonging. Paragraph 3 of the same Article does not specify the circle of those people who are beneficiaries of free general education. As regards higher education, the same paragraph subjects citizens of Georgia to this right. The Claimants contend that within the context of subjects of fully funded general education mandated by paragraph 3 of Article 35, the given paragraph should be read together with paragraph 1, joint reading of which gives us room to conclude that the State should fully fund general education of citizens of Georgia, aliens and stateless persons. Thereby, they state that the disputed provisions contradict paragraphs 1 and 3 of Article 35 of the Constitution of Georgia since based on the disputed provisions foreign citizens are obliged to pay money for a standard voucher.

13. In support of its arguments the Claimant brings in the case-law of the European Court of Human Rights and of the Supreme Court of the United States related to the disputed issues.

14. At the hearing on merits the Claimant specified that in the given case discrimination is based not on nationality, but on citizenship. Given that “citizenship” is not directly referred to in Article 14 of the Constitution of Georgia (does not belong to classic attributes) and the magnitude of differentiation is not high enough, the Court should be guided by the rational assessment test. At the same time, the Claimant noted that the differentiation manifests itself in two characteristics: citizenship and status.

15. Pursuant to the explanation of the Claimants’ representative, Claimants satisfy requirements to be granted the status of a compatriot, but they will not be able to obtain that status since they are residing in Georgia, while the status, under the law, can only be granted to people living outside of Georgia to whom the State provides funding for general education.

16. At the hearing on the merits of the case Claimant noted that the right to education which is protected by Article 35 of the Constitution of Georgia is certainly not an absolute right and its limitation within the scope of reasonableness is possible. According to the Claimants limitation of this right may be justified towards certain groups of foreigners who come to Georgia for a short period of time, for example, those foreigners who are here based on tourist or educational visa. However, limitation set by the disputed provisions towards groups similar to the one Claimants represent, who are permanent residents of Georgia, is unjustified.

17. The Claimant pointed out Law of Georgia “On Legal Status of Foreigners and Persons without Citizenship” and noted that the certificate of permanent residency is given to those persons who have legally lived in Georgia for the last 6 years. Six years in itself is a sufficient basis for a group of these people to form close connection with the Country. Based on all above mentioned, representative of Claimants stated that his mandators had full right to demand that their right

to general education be equally secured as it is for the citizens of Georgia and other groups of people noted in paragraph 7 of Article 22 of the Law of Georgia “On General Education”.

18. The Respondent did not agree with the Claimant’s request and stated that it would be at the outset wrongful to consider Georgian citizens and aliens as comparable groups with respect to social rights. Consequently, pursuant to the Respondent, it would be possible to consider comparable a group of foreigners whose right to general education is funded by the State and those foreigners, whose education is not funded by the State. The Respondent notes that the only basis of such difference is their status. Given that “status” is not directly referred to in Article 14 of the Constitution of Georgia (is not a classical characteristic), the Court should be guided by rationality test when assessing the differentiated treatment.

19. At the hearing on the merits the Respondent explained that one’s recognition as a compatriot takes place only if it is established that he/she, like a citizen of Georgia, has a connection with Georgia. Such connection may be origin or belonging of his/her language to the group of Georgian-Caucasian languages. Such persons, for example, are entitled to participate in sports competitions on behalf of Georgia as part of a national team. According to the Respondent, this attitude confirms their special connection with Georgian State.

20. The Respondent explains that Georgian State does not treat people with such special status as foreign citizens who have no connection with the State. The State with its policy in a way tries to contribute to the return of those people who already have certain connections with Georgia. The privileges prescribed in the area of general education for persons having a compatriot status aim to serve this purpose.

21. The Respondent attests that right to education is protected by the Constitution of Georgia. Education, as a rule, is a step that precedes acquiring of the profession, while both of them together are components of integration into the life. Right to education is a social right, while educational system is integral part of the social system. Pursuant to Article 35 of the Constitution of Georgia, everyone shall have the right to and freedom of choice of education. General education is fully funded by State in a manner prescribed by law. The Respondent contends that the Constitution referred to the law, which determines the conditions of funding of general education by the State. For the purposes of paragraph 1 of Article 35, right to education refers to all levels of education, including elementary, basic, secondary, as well as higher and vocational education. However, pursuant to the law, Georgian citizens receive funding for higher education only provided they meet certain conditions, which cannot be understood as limitation of a Constitutionally guaranteed right to education. Otherwise, setting of a court fee for pursuance of the right guaranteed under Article 42 of the Constitution of Georgia would be limitation of this right.

22. Consequently, the Respondent believes that the legislator, within the

limits set by the Constitution of Georgia, has established a rule which does not contradict paragraph 1 of Article 35 of the Constitution of Georgia and has thereby determined the process for acquiring general education for everyone, including the non-citizens and within its financial availability has ensured funding of its citizens and persons with particular connection to it. As regards international treaties and the principle of reciprocity, as per information available to the Respondent, the State does not have such agreement with any country and no other country has similar system of funding of general education. Whereas in the future, when concluding such international agreement, financial capabilities of the State shall be taken into consideration in the first place.

23. Pursuant to the explanation of Nugzar Kalandadze, head of the Office for Legal Expertise and Relationships with Courts of the Legal Issues Department of the Ministry of Education and Science, as of October 1 2013, 467 citizens of foreign countries have referred to the Ministry of Education and Science of Georgia with a request of a voucher and have paid a corresponding fee. The total fees collected amount to 117.495 Laris and 75 Tetris.

II

Reasoning Part

Constitutionality of the disputed provisions with respect to paragraphs 1 and 3 of Article 35 of the Constitution of Georgia

1. The Claimant disputes constitutionality of paragraph 7 of Article 22 and paragraphs 2 and 3 of Article 22¹ of the Law of Georgia "On General Education" with respect to paragraphs 1 and 3 of Article 35 of the Constitution of Georgia.

2. Paragraph 7 of Article 22 of the Law of Georgia "On General Education" exhaustively determines the group of people whose voucher for general education is fully funded by the State. Following persons fall in this group: citizens of Georgia, persons with neutral IDs or neutral travel document, foreign citizens living abroad who have the status of a compatriot, those citizens of foreign countries or persons without citizenship, whose right to general education is perfected on the basis of international treaties and agreements of Georgia, as well as those foreigners, towards whom the principle of reciprocity applies. Paragraphs 2 and 3 of Article 22¹ of the same Law prescribe procedure for obtaining standard vouchers by foreign citizens and persons without citizenship, pursuant to which, a prerequisite for obtaining a voucher is deposition by a person of a specific sum on the treasury account of the state budget.

3. Pursuant to paragraph 1 of Article 35 of the Constitution of Georgia "Everyone shall have the right to education. Freedom of choice in education shall be guaranteed". According to paragraph 3 of the same Article, "The State shall guarantee pre-school education as determined by law. Elementary and basic education shall be compulsory. General education shall be fully funded by the State according to law. Citizens shall have the right to state-funded vocational and higher education under the procedure and to the extent as provided for by law".

The Claimants deem that the disputed provisions contradict right to education protected by the Constitution since they, foreign citizens permanently residing in Georgia, should be entitled to State funded general education.

4. In light of the all the above mentioned, in deciding this dispute, the Constitutional Court of Georgia must determine whether the right to free education prescribed by Article 35 of the Constitution of Georgia extends to foreigners residing in Georgia. In case of finding the Claimants as subjects of the right to free general education, the Court shall assess proportionality of the limitation deriving from the disputed provisions. Consequently, within the frames of the present dispute, the Constitutional Court shall consider constitutionality of the disputed provisions only with respect to foreigners residing in Georgia.

5. Pursuant to paragraph 1 of Article 47 of the Constitution of Georgia “Aliens and stateless persons living in Georgia shall have the rights and obligations equal to those of the citizens of Georgia except as provided for by the Constitution and law”. Based on the case-law of the Constitutional Court, “The goal of [this provision] is to delineate the scope of coverage through constitutional rights for foreign nationals residing in Georgia and stateless persons. This provision determines the group of persons for constitutional rights and sets forth a guarantee that constitutional rights enshrined in Chapter 2 of the Constitution apply equally to aliens as to Georgian citizens, unless otherwise stated in the Constitution itself” (Judgment of the Constitutional Court of Georgia No. 3/1/512 dated June 26, 2012, Citizen of Denmark Heike Cronqvist v. the Parliament of Georgia, II-93).

6. There is a special tight relationship between the State and aliens residing in Georgia, similar to that of the citizens of Georgia, which is expressed in many aspects. “Existence of democratic society demands respect of the rights to each of its member, creation of equal circumstances and opportunities for development of each individual. The close ties of the foreign nationals residing in Georgia are what determined their special status in the Constitution, through which they acquired significant equality with Georgian citizens in the context of exercising their constitutional rights” (Judgment of the Constitutional Court of Georgia No. 3/1/512 dated June 26, 2012, Citizen of Denmark Heike Cronqvist v. the Parliament of Georgia, II-95). In view of the above mentioned, right to education set by Article 35 of the Constitution of Georgia shall extend to the aliens residing in Georgia in those circumstances where no contrary provision is prescribed by the Constitution itself.

7. As per the interpretation of the Constitutional Court of Georgia, “Chapter 2 of Georgian Constitution, which regulates citizenship and the rights and freedoms of individuals, uses different terms in defining subjects to various rights. In respective stipulations of the Constitution, one sees the following formulations: “human being”, “everyone”, “every human being”, “all people”, “citizen”, “citizens of Georgia”, “all Georgian citizens”. Constitution of Georgia, as an example of most modern Constitutions, separates the rights, which are

held only by the citizens of Georgia, from those, that are universal and extend to “everyone” (Judgment of the Constitutional Court of Georgia No. 3/1/512 dated June 26, 2012, Citizen of Denmark Heike Cronqvist v. the Parliament of Georgia, II-42).

8. The right of access to and freedom of choice of education guaranteed under Article 35 of the Constitution belongs to everyone. At the same time, paragraph 3 of Article 35 of the Constitution notes that “General education shall be fully funded by the State according to law. Citizens shall have the right to state-funded vocational and higher education under the procedure and to the extent as provided for by law”. It is clear that unlike higher and vocational education, the Constitution does not limit the right to free general education on the basis of citizenship. There are no other exemptions in the Constitution of Georgia related to the right of the aliens residing in Georgia to be entitled to free general education.

9. The Constitution aspires to full funding of the general education, the mechanism of implementation for which must be determined by law. It must be noted that Article 35 does not specify circle of people who should receive free education, whereas in other parts of the constitution we often meet a number of rights which are exclusively attributed to the citizens. Consequently, for the purposes of the Constitution, aliens fall within the subjects of funding of general education.

10. It is also important to look at the history of Article 35 for its interpretation. Until December 27 2006 the Constitution provided that in line with the established rules and within the set frames, the citizens were entitled to free secondary, vocational and higher education in the state institutions. This provision limited the beneficiaries of free general education to citizens of Georgia; whereas by virtue of amendments of December 27 2006 the words “citizen of Georgia” has been omitted from the context of obtaining free general education and the said sentence has been formulated as per currently existing wording. Consequently, it is unequivocal that the purpose and spirit of the amendment of Article 35 was to expand the circle of those subject to the right of free general education and inclusion aliens residing in Georgia in it. Therefore, on the basis of paragraph 1 of Article 47 of the Constitution of Georgia, the right to free general education equally extends to citizens of Georgia and aliens residing in Georgia.

11. At the same time, it should be noted that on the basis of paragraph 1 of Article 47 of the Constitution of Georgia, extension of the rights protected under Article 35 of the Constitution of Georgia to aliens residing in Georgia does not automatically exclude aliens residing outside of Georgia from the sphere of protection of this article. “The content of [article 47 of the Constitution] is exhausted by the fact that foreigners and apatrides residing in Georgia have the rights and obligations equal to those of citizens of Georgia with exceptions envisaged by the Constitution and law. It does not deal with the state of rights of

foreigners and apatrides not residing in Georgia. As there is no direct reference on prohibition to make the rights of foreigners and stateless persons equal to those of citizens of Georgia in the provision, then it does not exclude the possibility to make these persons equal by other provisions of the Constitution. ... Therefore, in that sense, it is decisive that each constitutional right by itself determines the subjects of this right, respectively, the issue of exercise of constitutional rights by foreigners not residing in Georgia shall be clarified within the scopes of the constitutional provision (every specific right) regulating this very right” (Judgment of the Constitutional Court of Georgia No. 1/466 dated June 28, 2010 Public Defender of Georgia v. the Parliament of Georgia, II-7). In view of the above mentioned, extension of the right to foreigners not residing in Georgia may derive from Article 35 of the Constitution itself. However, in light of the request of the Claim, decision on the present dispute does not require discussion on the rights of foreigners not residing in Georgia. Consequently, there is no need to decide on the issue of extension of the right protected under Article 35 of the Constitution of Georgia on foreigners not residing in Georgia.

12. As indicated above, pursuant to paragraph 3 of Article 35 of the Constitution of Georgia, the State fully funds general education as prescribed by the law. Therefore, the right to education guaranteed by the Constitution entails an obligation of the State to fully finance general education. At the same time, the rule of full funding is defined by the law. The law which prescribes the amount of funding must be in compliance with substantive requirements of the Constitution. Pursuant to the interpretation of the Constitutional Court of Georgia the principle of a fair state “sets strict constitutional limits on the state authority, including the legislative one” (Judgment of the Constitutional Court of Georgia No. 2/2-389 dated October 26, 2007 „Citizen of Georgia Maia Natadze and others v. the Parliament and the President of Georgia, II-18).

13. Constitutional law limitation of the legislative authority means that every legal act should be in compliance with the formal and substantive requirements of the Constitution. In the given case the law, which prescribes conditions for funding of the general education, must be in compliance with formal and substantive requirements of the Constitution. The disputed provision excludes the Claimants’ possibility to obtain funding for general education; consequently, there is a limitation of Claimants’ rights protected under Article 35 of the Constitution of Georgia, which generates the need to check its constitutional law justification.

14. In order to determine the sphere of protection of the basic right to education, it is necessary to define the essence of the right to education and its purpose, in the first place. Namely, what good the right to education seeks to protect and how essential a value it represents for the development of a democratic State.

15. Paragraph 1 of Article 35 of the Constitution of Georgia guarantees opportunity to receive education to every person. Uplift of education as the basic human right to the Constitutional rank, emphasises its particular importance for

a democratic State. Education represents inevitable part of a social life by means of which individuals learn self-development using their capabilities and skills as well as learn being of use to national and international society.

16. Main purpose of a general education is full-fledged development of individual's skills and capabilities, formation of critical analysis skills and views of a person, strengthening respect towards basic human rights, effective integration of a person into the society and promotion of tolerance among all national, racial, ethnic, religious or other groups.

17. Education helps an individual to find his/her place in the society, independently lead and settle his/her life, have a desired job, form a materially-secured family, if he/she so wishes, etc.

18. Personal liberty of an individual is dependent upon one's full exercise of the right to education, since without due education it would be difficult for a person to freely develop his/her personality. Consequently, it is of particular importance for a State to form an educated society. Presence of common sense in the society is an essential foundation for formation of a democratic and fair State. The best guarantee of protection of human rights is an educated society, which is aware of its rights and duties. It is noteworthy that taking advantage of the right to education does not mean only provision of information or accumulation of knowledge for a person; its purpose is also to bring use to the society. At the same time, social function of education is precisely formation of each person as a valuable member of the society.

19. The Constitutional Court of Georgia clarifies that financing of education has special importance both, for the subject of education as well as for the State. We cannot define funding of education as a privilege or aid given by the State to an individual. This is because realisation of the right to education is vitally important for the development of a democratic State; at the same time, limiting the access to education will forever deprive a person of the possibility of full-fledged existence.

20. Currently, it may be unequivocally said that realisation of the right to education and insurance of the free general education for the society is one of the most important obligations of the State. Education is fundamentally important in the process of formation of cultural values, for future professional growth and for normal integration in the environment.

21. It is in the direct and immediate interests of the State to create a democratic society, economic freedom, social and fair state, which of course, is not feasible without the adequate system of education. Effective realisation of the right to education is not just an individual interest of a person, but represents an important value of the society. Limitation of this right severely harms both: the individual and the society as a whole. In view of the above mentioned, the Constitutional Court finds that in terms of funding of the general education, the State must equally care for the citizens of Georgia as well as for the aliens residing in Georgia.

22. Despite the fact that provision of free general education is of particular importance for the existence of a modern democratic State, the right envisioned under Article 35 of the Constitution of Georgia is not absolute. This right may be limited for achieving legitimate aims of the democratic society. At the same time, upon limitation of the right, the legislator must keep a reasonable balance between the means used for limitation and the legitimate aim.

23. According to the principle of proportionality, “requires the restrictive regulation must be a reasonable and necessary means for achieving (legitimate) public aim. At the same time, the intensity of the restriction must be proportionate to the aim pursued. It is impermissible to pursue a legitimate aim at the expense of increased restriction of human rights” (Judgment of the Constitutional Court of Georgia No. 3/1/512 dated June 26, 2012, Citizen of Denmark Heike Cronqvist v. the Parliament of Georgia, II-60). In light of the above mentioned, the Constitutional Court must assess, based on the principle of proportionality to what extent proportionality is secured between the interests of an individual and the legitimate public aim.

24. In assessing the constitutionality of a provision, it is important to first of all identify the legitimate public aim to the achievement of which the limitation is related. Without a legitimate aim any intervention into human’s right is frivolous and such limitation of right is at the outset unjustified and unconstitutional.

25. According to the position of the Parliament of Georgia, the basis for limitation of the basic right to education for an alien is the exhaustive nature of the State budget. It is for this reason that paragraph 7 of Article 22 of the Law of Georgia “On General Education” limits free education to the persons with special connection with the State and to other groups of people listed in the same Article.

26. Pursuant to the interpretation of the Constitutional Court of Georgia, saving exhaustible resources may, in general, be an important public interest for limitation of a right. It is noteworthy that the State has rather wide margin of appreciation when the issue concerns exhaustible resources and economic strategy planning. At the same time, it should be noted that the exhaustible State resources, similar to the State budget, should in the first place be spent on effective realisation of basic human rights.

27. As has been noted above, funding general education may not be considered as a mere privilege. It is because on the one hand, establishing an educated society is advantageous for both, an individual and the State, i.e. education has far broader social function and on the other hand education is a constitutional right, directly protected by Article 35 of the Constitution of Georgia.

28. It is noteworthy that along with advancement of the stage of education the margin of States’ appreciation in terms of financing the education also grows. In certain cases, for example with respect of receiving higher education, the Constitution itself determines a special subject by way of a Georgian citizen. The fact that the Constitution makes elementary and basic education compulsory

and the right to free general education – universal, is in itself an indication of the particular importance State attaches to the insurance of free general education for aliens residing in Georgia.

29. At the beginning stage of education one studies elementary arithmetic, reading and writing, and other such skills which are invaluable in the process of formation of their thinking. The same applies to the general education as a whole. In view of the fact that more countries strive to create “knowledge-based” societies, the role of general education in one’s life significantly increases. It is obvious that in the modern society possession of merely elementary knowledge and skills is an obstacle for a successful personal and professional development which, for its part, has a negative impact on social and economic development of a country.

30. In light of the above mentioned, limitation of such right is accompanied by significant risks. Limitation of the right to education hinders individual’s social, economic, intellectual and psychological development. In case of limitation of the right to education the adolescent is discredited and the illiterate label will accompany him/her throughout the life. Such policy of state would create a risk of formation of the so-called “society in the dark” which will be domiciled in the State.

31. At the same time, we cannot assume that the aliens residing in Georgia will decide not to stay here. Therefore, limitation of a right to general education might cause significant damage to the State, which will certainly have a negative effect on economic welfare of the country on the one hand and on criminal situation on the other hand. Reservation of resources by means of limitation of the right to education is often disproportionate to the anticipated costs, which the State will have to incur due to those individuals in the future.

32. Pursuant to the explanation presented by the Respondent at the hearing on merits, the State has provided funding for general education only to citizens of Georgia, persons with particular connection and other groups of people named in paragraph 7 of Article 22 of the Law of Georgia “On General Education”. Intervention in the right to education has been justified on the bases of limited resources of the State. The Constitutional Court has established in the present case that in terms of right to education foreign citizens living in Georgia carry the same importance as citizens of Georgia and those groups of people who are indicated in paragraph 7 of Article 22 of the Law of Georgia “On General Education”.

33. Witness statement evidences that as of October 1 2013, 467 foreign citizens have approached the Ministry of Education and Science of Georgia with a request to issue vouchers, and have paid the respective fee. The said money amounts to 117.495 Lari and 75 Tetri. The Constitutional Court comments that this sum may not be a heavy burden for the State budget, especially given that the issue concerns advancement of education of the society.

34. Respondent did not present any tangible reason which would convince the Constitutional Court that limitation of the right to general education for for-

eign citizens residing in Georgia would be justified due to reservation of material resources or for other significant legitimate interests.

35. Taking all the above mentioned into account, the Constitutional Court concludes, that the Parliament of Georgia has disproportionately limited the basic right to general education of the foreign citizens living in Georgia. Consequently, the disputed provisions contradict with the right of education established in Article 35 of the Constitution of Georgia and are unconstitutional.

Constitutionality of the disputed provisions with respect to Article 14 of the Constitution of Georgia

36. Article 14 of the Constitution of Georgia is a guarantee of one's freedom and everyone's equality before the law. Pursuant to Article 14 of the Constitution of Georgia "Everyone is born free and is equal before the law regardless of race, colour of skin, language, sex, religion, political or other opinions, national, ethnic and social affiliation, origin, property or social status, place of residence."

37. Decision of the Constitutional Court notes that "the degree of guarantee of equality before the law is an objective criterion for the purposes of assessment of the degree of rule of law limited by democracy and supremacy of human rights in the country. Thereby, this principle represents both, the ground and the purpose of a democratic and fair state." (Judgment of the Constitutional Court of Georgia No. 1/1/493 dated December 27, 2010, Political unions of citizens "Akhali Memarjveneebi" and "Conservative Party of Georgia" v. the Parliament of Georgia, II-4).

38. According to the Claimants, unequal treatment is expressed by the fact that the State is not funding general education for those citizens of foreign countries whose right to general education is not exercised on the basis of an international agreements and treaties of Georgia and towards whom no principle of reciprocity applies, and they have to pay the corresponding fee. Therefore, the abovementioned group of people are differentiated from the group of people noted in paragraph 7 of Article 22 of the Law of Georgia "On General Education."

39. Pursuant to the definition of the Constitutional Court, the purpose of equality is not to achieve universal equality among all people and groups of people, levelling them in one plane. The basic right protected by Article 14 of the Constitution is a guarantee of equal treatment of essentially equal people. "The purpose of Article 14 of the Constitution is not absolute equality of people, rather guarantee of equality among essentially equal people" (Judgment of the Constitutional Court of Georgia No. 2/1/536 dated February 4, 2014 Citizens of Georgia – Levan Asatiani, Irakli Vatcharadze, Levan Berianidze, Beka Buchashvili and Gocha Gabodze v. the Minister of Labour, Health and Social Affairs of Georgia, II-8). "Within the frames of this principle, the primary purpose and function of the State may not be total equality of people since this would contradict the very idea of equality, the essence of the right. The idea of equality serves the purpose of guarantee of equal opportunity, i.e. giving equal opportunities to people for self-realization in a certain domain" (Judgment of the Constitutional

Court of Georgia No. 1/1/493 dated December 27, 2010, Political unions of citizens “Akhali Memarjveneebi” and “Conservative Party of Georgia” v. the Parliament of Georgia).

40. In view of the above mentioned, intervention into the rights protected by Article 14 of the Constitution of Georgia by the disputed provision shall take place only if the Claimants shall be considered to be essentially equal to those people who receive funding on the basis of paragraph 7 of Article 22 of the Law of Georgia “On General Education.” “They must be in the similar category of similar circumstances by a certain context or criteria; must be essentially equal in a specific circumstance or relationship” (Judgment of the Constitutional Court of Georgia No. 1/1/493 dated December 27, 2010, Political unions of citizens “Akhali Memarjveneebi” and “Conservative Party of Georgia” v. the Parliament of Georgia, II-2).

41. At the hearing on the merits the Claimant party specified that the disputed provisions treat essentially equal people in an unequal manner. Namely, pursuant to the disputed provisions the State provides funding for general education to the citizens of Georgia and other groups of people noted in paragraph 7 of Article 22 of the Law of Georgia “On General Education”, including to persons leaving abroad who have the status of a compatriot, however does not fund general education for the Claimants.

42. Therefore, the Constitutional Court must determine whether the group of people similar to the Claimants (aliens living in Georgia, whose right to education is not exercised on the basis of international agreements and treaties of Georgia; and also where no principle of reciprocity applies), citizens of Georgia and persons living abroad who have the status of a compatriot, are essentially equal subjects within the framework of the relationship regulated by law.

43. In the same decision, the Constitutional Court has several times emphasised when discussing the right to education that aliens living in Georgia are integral part of the society and they do not differ from citizens of Georgia in terms of their need for general education. Consequently, within the frames of the present dispute, citizens of Georgia and groups of people similar to the Claimants do represent essentially equal subjects.

44. Pursuant to subparagraph “b” of paragraph 1 of Article 4 of the Law of Georgia “On Compatriots Living Abroad and Diaspora Organisations” one may receive the status of a compatriot living abroad if the person is a citizen of another state, who has Georgian origins and/or whose native language belongs to Georgian-Caucasian group of languages. As per subparagraph “c” of Article 3 of the same Law, “Georgian origin” means belonging of a person or of his/her ancestor to one of the ethnical groups residing on the territory of Georgia and recognition of Georgia as his/her country of origin. At the same time, according to the law, one will receive the status of a compatriot only if he/she resides abroad.

45. As per subparagraph “d” of paragraph 1 of Article 10 of the Law of

Georgia “On Compatriots Living Abroad and Diaspora Organisations” return of the compatriot living abroad to Georgia is the ground for termination of the status of “a compatriot living abroad”. Thereby persons who satisfy requirements of subparagraph “b” of paragraph 1 of Article 4 of the Law of Georgia “On Compatriots Living Abroad and Diaspora Organisations” and reside abroad represent beneficiaries of State funding for general education. While persons who satisfy the same criteria but reside in Georgia are not be eligible for funding. It is obvious that the two groups of people are essentially equal within the context of eligibility to free general education.

46. Thus, there is unequal treatment of essentially equal persons. Thereby intervention into the right of equality guaranteed by Article 14 of the Constitution of Georgia takes place. Pursuant to the clarification of the Constitutional Court, “There is no single standard to review constitutionality of interference in the scope of right to equality. The Provision which provides differential treatment on the classical and specific grounds or is very intensive will be subjected to the view of constitutionality through employing “strict scrutiny” in application all principle of proportionality” (Judgment of the Constitutional Court of Georgia No. 2/1/473 dated March 18, 2011, Citizen of Georgia Bitchiko Tchonkadze and others v. the Minister of Energy of Georgia, II-6).

47. In view of the above mentioned, the Constitutional Court must determine: a) whether the differentiation is related to classic, specific characteristics; b) whether the differentiation is characterised by high intensity.

48. As per the interpretation of the Constitutional Court “In view of the nature on the right of equality its application is related to the presence of comparable rules whereas differentiation on the ground of residence implies that people residing different geographical territory have different rights” (Judgment of the Constitutional Court of Georgia No. 2/1/473 dated March 18, 2011, Citizen of Georgia Bitchiko Tchonkadze and others v. the Minister of Energy of Georgia, II-8).

49. As already noted above, the ground for differentiation of a foreign citizen residing in Georgia or a person without citizenship, who may be satisfying the criteria set by subparagraph “b” of paragraph 1 of Article 4 of the Law of Georgia “On Compatriots Living Abroad and Diaspora Organizations” and a compatriot leaving abroad is the fact of residence on the territory of Georgia. According to the Law a foreigner residing in Georgia may not be granted the status of a compatriot leaving abroad. He/she must reside abroad for this purpose. Consequently, geographic location, and in particular, place of residence is the ground for differentiation of two comparable groups, which is a classic characteristic envisioned under Article 14 of the Constitution of Georgia.

50. Second attribute of differentiation between the comparable groups is “citizenship”, since citizens of Georgia are entitled for State funding of general education, while the groups of people similar to the Claimants are not.

51. In its Judgment No.1/4/535 dated August 6, 2013, Citizen of Georgia

Avtandil Kakhniashvili v. the Parliament of Georgia, the Constitutional Court already established that the citizenship does not belong to the list of those classical attributes which we see in Article 14 of the Constitution. Consequently, in the part of differentiation based on citizenship, the Court shall assess intervention into Article 14 based on the strict scrutiny only if differentiation is characterised by high intensity.

52. Deriving from the case-law of the Constitutional Court of Georgia “the criteria of assessment of intensity of differentiation shall vary in each case, in view of the nature of differentiation and the sphere of regulation. However, in any case, it will be decisive to determine how significantly the essentially equal people will be put in different situations, i.e. how sharply the differentiation will part the equal persons from equal opportunity to engage in a particular social relationship” (Judgment of the Constitutional Court of Georgia No.1/1/493 dated December 27, 2010, Political unions of citizens “Akhali Memarjveneebi” and “Conservative Party of Georgia” v. the Parliament of Georgia, II-6).

53. Therefore, in order to establish whether the differentiation set by the disputed provision is of high intensity, we need to compare the legal regime of the Claimants and the regime set towards the group of people envisioned by paragraph 7 of Article 22 of the Law of Georgia “On General Education” in terms of funding the education. The Claimants do not receive funding for general education at all, while for the other comparable group it is fully funded by the State. The disputed provisions sharply part the comparable groups from equal opportunity to engage in social relationships consequently the differentiation is of high intensity.

54. Therefore based to the disputed provisions differentiation takes place on the bases of “place of residence” and “citizenship”. At the same time, the differentiation is of high intensity and consequently there is a need to employ strict scrutiny of assessment of constitutionality of intervention into Article 14 of the Constitution with respect to both attributes. Based on the case-law of the Court, strict scrutiny of assessment of limitation of the right with respect to Article 14 of the Constitution provides for using the principle of proportionality. Additionally within the framework of this test, “in establishing the legitimate aim, it is necessary to prove that intervention of the State is absolutely necessary, there is ‘an invincible interest of the state’” (Judgment of the Constitutional Court of Georgia No. 1/1/493 dated December 27, 2010, “Political unions of citizens “Akhali Memarjveneebi” and “Conservative Party of Georgia” v. the Parliament of Georgia, II-6).

55. It is noteworthy that the Respondent has not referred to “an invincible interest” of the State in arguing constitutionality of the provision. The Parliament of Georgia indicated the necessity to save budget resources; however as has already been noted the Respondent failed to establish that granting the right to education to citizens of foreign countries would be an unjustifiably heavy burden on the State budget or that it would harm some other interests. Therefore

no “invincible State interest” exists in the present case, which would justify differentiation of the Claimants’ class. Consequently, the disputed provisions contradict the basic right of equality and are unconstitutional with respect to Article 14 of the Constitution of Georgia.

III

Ruling Part

On the basis of subparagraph “f” of paragraph 1 and paragraph 2 of article 89 and of the Constitution of Georgia; subparagraph “e” of paragraph 1 of article 19, paragraph 2 of article 21, paragraph 3 of article 25, subparagraph “a” of paragraph 1 of article 39 and paragraphs 2, 4, 7 and 8 of article 43 of the Organic Law of Georgia “On the Constitutional Court of Georgia”, paragraphs 1 and 2 of article 7, articles 30, 31, 32 and 33 of the Law of Georgia “On Constitutional Legal Proceedings”,

THE CONSTITUTIONAL COURT OF GEORGIA

RULES:

1. Constitutional Claim No.540 shall be upheld (Citizens of Russia – Oganesh Darbinian, Rudolf Darbinian, Sussanna Jamkotsian and Citizens of Armenia – Milena Barseghian and Lena Barseghian v. the Parliament of Georgia) and following provisions shall be found unconstitutional with respect to Articles 14 and paragraphs 1 and 3 of Article 35 of Constitution of Georgia:

a. Normative meaning of paragraph 7 of Article 22 of the Law of Georgia “On General Education” which excludes providing funding envisioned under Article 22 of the same Law to citizens of foreign countries residing in Georgia;

b. Paragraphs 2 and 3 of Article 22¹ of the Law of Georgia “On General Education” with respect to citizens of foreign countries residing in Georgia.

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

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

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

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

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

Members of the Board:

Zaza Tavadze

Otar Sichinava

Lali Papiashvili

Tamaz Tsabutashvili