
**CITIZEN OF GEORGIA AVTANDIL KAKHNIASHVILI
VERSUS THE PARLIAMENT OF GEORGIA**

N1/4/535

Batumi, 06 August 2013

Composition of the Board:

1. Konstantine Vardzelashvili – Chairman of the sitting;
2. Vakhtang Gvaramia – Member;
3. Ketevan Eremadze – Member;
4. Maia Kopaleishvili – Member, Judge Rapporteur.

Secretary of the Sitting: Lili Skhirtladze

Title of the Case: Citizen of Georgia Avtandil Kakhniashvili versus the Parliament of Georgia.

Subject of the Dispute: Constitutionality of the first part of Article 117 of the Code of Administrative Offences of Georgia with respect to Article 14 of the constitution of Georgia.

Participants to the case: The Claimant Avtandil Kakhniashvili. Representatives of the Parliament of Georgia – Tamar Meskhia, Tamar Khintibidze.

I

Descriptive Part

1. On 09 July 2012, a constitutional claim (registration N535) was lodged with the Constitutional court of Georgia by citizen of Georgia Avtandil Kakhniashvili. On 12 July 2012, the constitutional claim was referred to the First 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 N1/5/535 of 14 December 2012, the First Board of the Constitutional Court of Georgia admitted the constitutional claim for the consideration on the merits on the part of the claim requirement, which dealt with constitutionality of the first part of Article 117 of the Code of Administrative Offences of Georgia with respect to Article 14 of the constitution of Georgia.

3. The sitting of the First Board of the constitutional court for consideration of the case on the merits with an oral hearing was held on 27 February 2013.

4. Subparagraph “f” of the first paragraph of Article 89 of the constitution of Georgia; subparagraph “e” of the first paragraph of Article 19, subparagraph “a” of the first paragraph of Article 39 of the organic law of Georgia “On the Constitutional Court of Georgia”; paragraph 2 of Article 1 of the law of Georgia “On the Constitutional Legal Proceedings” are indicated in the constitutional claim N535 as the grounds for applying to the constitutional court.

5. The Claimant contests the constitutionality of the first part of Article 117 of the Code of Administrative Offences of Georgia with respect to Article 14 of the constitution of Georgia.

6. According to the disputed norm, while driving a means of transport, in accordance with the procedure prescribed by the legislation of Georgia, evasion of examination establishing influence of alcohol, drugs and psychotropic substances will lead to deprivation of the right to drive a means of transport for the term of 3 years, and imposition of fine in the amount of 500 GEL upon a foreign citizen and a stateless person staying in the territory of Georgia (except for the person, who enjoys immunity in compliance with the law of Georgia and international agreements and treaties of Georgia).

7. Pursuant to Article 14 of the constitution of Georgia, “Everyone is free by birth and is equal before law regardless of race, color, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, place of residence”.

8. It is indicated in the constitutional claim that on 04 September 2009, the Claimant was stopped by the Patrol Police and was asked to undergo test for establishing influence of alcohol. The Claimant as a sign of protest refused to undergo the mentioned test, because of which, a report on administrative offense against him was drawn up and he was deprived of the right to drive a means of transport for the term of 3 years. It is indicated in the claim that the Claimant himself, in accordance with the procedure prescribed by the legislation, underwent the test for establishing influence of alcohol and submitted the mentioned conclusion to the Patrol Police Department. Besides, he appealed the report on administrative offence in an administrative procedure at the Ministry of Internal Affairs of Georgia, and afterwards, he applies to all three instances of the common courts.

9. In the Claimant’s opinion, the disputed norm with its content is discriminatory, since it imposes pecuniary fine upon a citizen of foreign country or a stateless person staying in the territory of Georgia for the same action, for which a citizen of Georgia is deprived of the right to drive a means of transport for the term of 3 years, which amount to violation of Article 14 of the constitution of Georgia.

10. As the Claimant asserts, the disputed norm is vague and needs to be clarified to a certain extent. In particular, the notion defined by the disputed norm “evading the examination establishing influence of alcohol” is not explained in the Code of Administrative Offences. Furthermore, the rule for examination is determined by the Joint Order of the Ministers of Internal Affairs and Labor, Health and Social Affairs of Georgia. In the opinion of the Claimant, a person is obliged to have knowledge of the law and not of normative acts issued by the Minister, respectively, he thinks that the procedures required for establishing influence of alcohol should be laid down in the Code itself, in order that a person was aware that evasion of the mentioned procedures will give rise to enactment of respective sanction against him. Stemming from this, the applicable wording of the disputed norm is not foreseeable and contradicts the constitution of Georgia.

11. The Claimant at the sitting of the consideration of the case on merits additionally indicated that in any case, when different types of sanction are envisaged for one and the same offence, it gives rise to discrimination. In the opinion of the Claimant, if one and the same sanction is envisaged by the legislation for a foreigner and citizen of Georgia, the disputed norm will not come into contradiction with Article 14 of the constitution of Georgia.

12. The Claimant also indicated that regulation applicable by the disputed norm may not be justified by the legitimate aim, because historically, the mentioned norm was introduced for other purposes. Initial wording of the disputed norm envisaged the transfer of a person to relevant institution by the Police for the purpose of examining influence of alcohol. Under the disputed norm, a person is examined by means of Alcotest, which makes the norm lose its purpose and intention and it should be recognized as unconstitutional.

13. According to explanation provided by the Respondent, considering the content of the disputed norm, a foreigner and citizen of Georgia should be considered as persons being equal in essence for the purposes of Article 14 of the constitution of Georgia. Besides, the disputed norm foresees different sanctions for a foreigner and citizens of Georgia, thus, there is different treatment of persons being different in essence based on their citizenship in place.

14. As the Respondent asserts, on the basis of Article 47 of the constitution of Georgia, the constitution allows the possibility of difference between citizens and stateless persons, besides, there is not classic sign of differentiation as foreseen by Article 14 of the constitution at hand, and respectively, the disputed norm should be assessed by the test of rational differentiation. The abovementioned implies that to corroborate differentiated treatment, it is sufficient to have maximum reality, inevitability and necessity of differentiation and existence of real and rational link of differentiation between objective cause and result of its action.

15. The Respondent indicated that introduction of the disputed norm aims at observance of the rules of the road by participants in road traffic, upgrade of the level of responsibility of an offender and prevention of administrative offences. Besides, one State cannot abrogate a licence (driving licence) issued by another State. Therefore, imposition of a pecuniary fine upon a foreign citizen for the committed offence is an adequate reaction of the State and there is the rational connection with the mentioned objective purpose and the end at hand.

16. The Respondent additionally indicated that for the purposes of the disputed norm, a foreigner should be interpreted as a person holding the driving licence issued by a foreign country, and for the purposes of other Articles of the Code of Administrative Offences, which envisage the possibility of forfeiture of a foreigner's driving licence, a foreigner and stateless person should be interpreted as a person holding the driving licence issued by Georgia. Further, the Respon-

dent noted that there is the Brussels Convention on the International effects of Deprivation of the Right to Drive a Motor vehicle, which has not yet been ratified by Georgia. Following ratification of the mentioned convention, the legislation will be respectively harmonized.

17. Stemming from the abovementioned, the Respondent considers that the disputed norm passes the rational differentiation test and, accordingly, provides the justified differentiation, which implies that Article 14 of the constitution of Georgia was not violated.

II

Motivational Part

1. The constitutional court of Georgia, within the scopes of the dispute on the constitutional claim N535 should decide the constitutionality of the first part of Article 117 of the Code of Administrative Offences of Georgia with respect to Article 14 of the constitution of Georgia. Under the disputed norms: “while driving a means of transport, in accordance with the procedure prescribed by the legislation of Georgia, evasion of examination establishing influence of alcohol, drugs and psychotropic substances will lead to deprivation of the right to drive a means of transport for the term of 3 years, and imposition of fine in the amount of 500 GEL upon a foreign citizen and a stateless person staying in the territory of Georgia (except for the person, who enjoys immunity in compliance with the law of Georgia and international agreements and treaties of Georgia).

2. The Claimant believes that the disputed norm does not pursue the legitimate aim and is discriminatory, because it imposes only a pecuniary fine upon a foreigner for the same action, for commission of which a citizen of Georgia shall be deprived of the right to drive for the term of 3 years. Accordingly, the disputed norm placed him, as a citizen of Georgia, and a citizen of foreign country for having committed one and the same action in different legal state. In his opinion, application of different penalties, for one and the same action amounts in itself discrimination. Accordingly, the Claimant clearly refers about discrimination based on citizenship.

3. The Constitutional court, first of all, interprets the essence of the constitutional norm prohibiting the discrimination and the requirements, which the mentioned constitutional rule contains with regard to the legislator. Article 14 of the constitution of Georgia has the following content: “Everyone is free by birth and is equal before law regardless of race, color, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, place of residence”. The mentioned constitutional rule not only regulates the basic right to equality before the law, but also it represents fundamental constitutional principle of equality before the law, “which, in general, implies the guarantee of equal conditions for legal protection of individuals. The degree for

assuring the equality before the law is an objective criterion for assessing the degree of the supremacy of law restricted in favor to democracy and human rights in the country. Therefore, this principle represents not only the foundation for democratic and rule-of-law based state, but also its goal” (Decision N1/1/493 of 27 December 2010 of the constitutional court of Georgia on the case “Political Unions of Citizens: “The New Rights” and “The Conservative Party of Georgia” versus the Parliament of Georgia”, II-1; Decision N1/3/534 of 11 June 2013 of the constitutional court of Georgia on the case “Citizen Tristan Mamagulashvili versus the Parliament of Georgia”, II-2).

4. “The basic essence and purpose of Article 14 of the constitution of Georgia is that “the State should treat equally the persons being in analogous, similar, materially equal circumstances, should not permit to consider the equal in essence as unequal and vice versa” (Decision N2/1-392 of 31 March 2008 of the constitutional court of Georgia on the case “Citizen of Georgia Shota Beridze and others versus the Parliament of Georgia”, II-2; Decision N1/1/493 of 27 December 2010 of the constitutional court of Georgia on the case “Political Unions of Citizens: “The New Rights” and “The Conservative Party of Georgia” versus the Parliament of Georgia, II-2; Decision N1/1/477 of 22 December 2011 of the constitutional court of Georgia on the case “The Public Defender of Georgia versus the Parliament of Georgia”, II-68; Decision N1/3/523 of 11 June 2013 of the constitutional court of Georgia on the case “Citizen of Georgia Tristan Mamagulashvili versus the Parliament of Georgia”, II-5). “The basic right to equality differs from other constitutional rights from the point that it does not protect any defined sphere of life. The principle of equality requires equal treatment in all the spheres protected by human rights and legitimate interests... Prohibition of discrimination demands from the State that the regulation established by it be in conformity with the basic essence of equality – to treat the equal in essence equally and vice versa” (Decision N1/1/493 of 27 December 2010 of the constitutional court of Georgia on the case “Political Unions of Citizens: “The New Rights” and “The Conservative Party” versus the Parliament of Georgia, II-4; Decision N1/1/539 of 11 April 2013 of the constitutional court of Georgia on the case “Citizen of Georgia Besik Adamia versus the Parliament of Georgia”, II-4).

5. “Article 14 of the constitution of Georgia prohibits both direct and indirect discrimination. At the same time, any different treatment, in itself, does not mean discrimination. In individual case, even in sufficiently similar legal relations, it is possible that differentiated treatment is necessary and inevitable. This frequently is unavoidable. Accordingly, differentiation is not strange thing for various spheres of public relations, “however each of them must not be uncorroborated” (Decision N1/1/493 of 27 December of the constitutional court of Georgia on the case “Political Unions of Citizens: “The New Rights” and “The

Conservative Party of Georgia” versus the Parliament of Georgia”, II-8; Decision N1/3/534 of 11 June 2013 of the constitutional court of Georgia on the case “Citizen of Georgia Tristan Mamagulashvili versus the Parliament of Georgia”, II-6). The constitutional court of Georgia repeatedly indicated that in assessing and establishing the discriminatory nature of differentiated treatment, the court resorts to the basic approach: “in differentiated treatment, we have to distinguish from one another discriminatory differentiation and the differentiation conditioned by objective circumstances. The different treatment should not be end in itself. The discrimination occurs, if the reasons for differentiation are unexplained, lacks reasonable ground. Therefore, the discrimination is only self-intentional, unjustified differentiation, uncorroborated application of the law with different approach towards the circle of specific persons. Consequently, the right to equality prohibits not differentiated treatment in general, but rather only self-intentional and unjustified differentiation” (Decision N1/1/493 of 27 December 2010 of the constitutional court of Georgia on the case “Political Unions of Citizens: “The New Rights” and “The Conservative Party” versus the Parliament of Georgia”, II-3; Decision N1/1/539 of 11 April 2013 of the constitutional court of Georgia on the case “Citizen of Georgia Besik Adamia versus the Parliament of Georgia”, II-6).

6. Upon assessment of the disputed norm with respect to Article 14 of the constitution of Georgia, in the first place, we have to establish whether or not addressees/subjects of the disputed norm are equal in essence within the scopes of specific legal relations defined by this norm, and in case of confirmation, whether or not there is unequal treatment against persons being equal in essence at hand. To this end, we have to take into account the essence of the disputed regulation. The disputed norm represents a regulation of the Code of Administrative Offences of Georgia and is directed towards persons, who, on the ground of the right to drive, while driving a means of transport, in accordance with the procedure prescribed by the legislation of Georgia, evade the examination establishing influence of alcohol, drugs and psychotropic substance. The precondition for application of the disputed norm is to subject persons driving a means of transport to specific measures, which serves provision of the road safety. The content of this measure is demonstrated in taking the examination establishing influence of alcohol, drugs and psychotropic substances. Both a citizen of Georgia and a foreigner might be subject to the given measure. Pursuant to paragraph 11 “3” of the first Article of the law of Georgia of 28 May 1999 “On Road Traffic Safety”, a driver is a physical person who drives a means of transport. At the same time, under subparagraph “a” of the first paragraph of Article 49 of the Order N598 of 1st of August 2012 of the Minister of Internal Affairs of Georgia “On the Approval of the Rules for the conduct of examination to acquire the right to drive a means of transport, granting of the right to drive, restoration of deprived or suspended (annulled)

right to drive, issuance and annulment (including, alteration and restoration) of a driving licence, driving licence for tramways and international driving licence, maintenance of registration record of issuance of driving licence, also the rule and conditions for alteration and recognition of document certifying the right to drive a means of transport issued by a foreign country”, a citizen of foreign country or stateless person holding the driving licence issued by a foreign country has the right, “before expiration of the term of driving licence issued by a foreign country, but no later than one year after he entered last time to the territory of Georgia, to participate in the road traffic through the territory of Georgia as a driver”. Stemming from this, a citizen of Georgia as well as a foreigner and a stateless person equally has the right to drive a means of transport in the territory of Georgia.

7. Bearing in mind all the aforementioned, within the context of the disputed regulation, citizens of Georgia and citizens of foreign country represent comparable categories. Both groups are placed in analogous circumstances, because both of them drive a means of transport, participate in road traffic, are subject to specific measures in the form of examination influence of alcohol, drugs and psychotropic substance and by evasion of the examination (by violating the legislation of Georgia” equally commits the offense envisaged by the disputed norm.

8. It should be here mentioned that in a specific case, the court does not intend to establish the constitutionality of strictness of the penalties established by the disputed norm and each of these penalties (fine, deprivation of the right to drive) for offences committed, because in the given case, considering the requirement of the Claimant, the court does not face this necessity. The Claimant explains that in case of imposition of equal penalties, he would not see the discrimination. Accordingly, he finds the norm discriminatory exactly because of the fact that a foreigner is punished differently and a citizen of Georgia differently. It is also evident that in the given case, clearly incommensurable types of penalties against a foreigner and a citizen of Georgia is applied for one and the same offences. As it is known, deprivation of the right to drive a means of transport is related to the suspension of the already recognized right for the term of 3 years. It is possible that main activities of a person is linked with the right to drive, is aimed to the sphere of interests of a person, who will be deprived of the right to drive, driving a means of transport could represent main source of his income. Considering the abovementioned, deprivation of the right to drive may have negative effect on self-realization of a person in this or that sphere of his activities, may have substantial impact upon on lifestyle of a specific person and upon the degree of the enjoy certain freedom. It is noteworthy that deprivation of the right to drive as compared to a pecuniary fine is also considered by the legislation as being heavier sanction. This is confirmed by a range of norms of the Code of Administrative Offences of Georgia. For instance, according to the first part of Article 116

of the Code of Administrative Offences, driving a means of transport under the influence of alcohol will lead to a fine in the amount of 200 GEL. And in case of repetition of the same action within a period of 1 year, shall lead to deprivation of the right to drive for the term of 1 year (Part 4 of Article 116). Pursuant to the first part of Article 125 of the Code of Administrative Offences, if a driver of a means of transport drives exceeds the speed limit by 15 km/hr, it will lead to a fine in the amount of 100 GEL, and under the Part 5 of the same article, the same action, which resulted in light damage of means of transport, cargo, road, road or other building, also other property or human body, will give rise to deprivation of the right to drive for the term of 1 year. It is evident that for graver offenses, the legislator, as an administrative penalty, envisages deprivation of the right to drive a means of transport. Respectively, stemming from the spirit of the Code on Administrative Offences, the legislator considers deprivation of the right to drive a means of transport as being graver administrative penalty than a pecuniary fine. Therefore, in the given case, under the disputed norm, stricter penalty is envisaged for a citizen of Georgia, than it is envisaged for a foreign citizen who has committed the same action. Accordingly, in order to settle the given dispute, the court must establish to what extent the differentiated approach towards persons being equal in essence is justified.

9. Besides, we indicate that with regard to establishment of constitutionality of size, volume and gravity of an administrative penalty the court declared in one of the cases: “to determine an action as an offence, impose a penalty and definition of its gravity is an exclusive competence of the State (legislator) ... while imposing an administrative penalty, the scopes of free actions conferred upon the legislator is conditioned by the circumstance that it is impossible to define beforehand, for every specific offence, to what extent and size it will be adequate to impose a penalty ... although, the efforts of the legislator should be always directed to adequately adjust each administrative offence to the action, which violates rights of others and inflicts the damage upon the public, administrative penalty measure may become as a subject of assessment by the court only in special case ... the constitutional court shall see the relation of administrative penalty with the right of a person guaranteed by the constitution only in case if the administrative penalty represents clearly unreasonable and disproportionate measure for achieve the goal and of interference with the sphere protected by the constitutional right” (Decision N4/482,483,487,503 of 10 November 2010 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, citizen – Dachi Tsaguria and Jaba Jishkariani, the Public Defender of Georgia versus the Parliament of Georgia”, II-8).

10. The result of operation of the disputed norm and its effect upon persons towards which it is applied, is expressed in the mechanism of responsibility, which the regulation provides in the case of evading the examination establishing influence of alcohol, drugs and psychotropic substance. The disputed norm causes the application of different penalties for a citizen of Georgia and a foreign citizen who have committed one and the same administrative offence. For a citizen of Georgia - deprivation of the right to drive for the term of 3 years, imposition a fine in the amount of 500 GEL of a foreign citizen and a stateless person (except for the persons enjoying immunity in compliance with the Georgian laws and international treaties and agreement of Georgia).

11. From the abovementioned, it becomes obvious that the disputed norm gives rise unequal treatment of persons being equal in essence, besides, differentiation is exercised based on citizenship. In the given case, citizenship represents a sign for differentiation, in other words, there is legally different treatment towards citizens of Georgia and foreigners at hand, based on the criteria of citizenship.

12. Rule of Article 14 of the constitution of Georgia does not refer to prohibition of differentiation based on citizenship. However, the court considers as an important circumstance the fact that the disputed norm “gives rise to differentiated treatment towards persons being equal in essence, and respectively, requires to be assessed by the constitutional court, because the constitutional court unequivocally formulated its position with regard to the scopes of Article 14 of the constitution ... “To deem the characteristics laid down in Article 14 of the constitution as exhaustive will automatically cause the confirmation by the court of the fact that the incidences of differentiation based on any other signs are not discriminatory, because they are not protected by the constitution. Naturally, such approach will not be correct, because failure to mention each of them in Article 14 of the constitution does not exclude uncorroboratedness of the differentiation ... differentiated approach may occur not only according to the signs listed in the constitution and not only, even based on those signs, in the process of enjoyment of specific constitutional rights. Prohibition of discrimination demands from the State that any regulation established by it be in compliance with the basic essence of equality – to treat the equal in essence as equal and vice versa. Stemming from this, any norm conflicting with the basic essence of equality should become a subject of discussions of the constitutional court” (Decision N1/1/493 of 27 December 2010 of the constitutional court of Georgia on the case “Political Unions of Citizens: “The New Rights” and “The Conservative Party of Georgia” versus the Parliament of Georgia”, II-4; Decision N1/3/534 of 11 June 2013 of the constitutional court of Georgia on the case “Citizen of Georgia Tristan Mamagulashvili versus the Parliament of Georgia”, II-23-27). The Constitutional Court, on differentiated treatment based on directly citizenship, also declared that “Article

14 of the constitution relates to the law and establishes how not to be putting a foreigner and a citizen of Georgia into different legal situation by the law Subject to assessment with the right to equality before the law foreseen by Article 14 of the constitution” (Decision N3/1/512 of 26 June 2012 of the constitutional court of Georgia on the case “Citizen of Denmark Heike Kronquist versus the Parliament of Georgia”, II-97, 99).

13. Simultaneously, the practice of the constitutional court of Georgia indicates that assessment of every case of differentiated treatment in the light of different degree of its gravity, cannot be done by applying single standard and identical criteria. “The criteria of the court for assessment of discriminatory nature of differentiated treatment also vary. Upon differentiation based on classic, specific characteristics, the court employs the strict scrutiny test and assesses the norm in accordance with the principle of proportionality, besides, within the scopes of “strict test”, while corroborating the legitimate aim, it is necessary to prove that interference from the State is absolutely necessary, and there exists “the insurmountable interest of the State”. In the remaining cases, the court determines the need to apply the strict test according to the degree of intensity of differentiation. Besides, the criteria for assessment the intensity of differentiation will be different in every specific case, stemming from the nature of differentiation, the sphere of regulation. However, in any case, it will be decisive to what extent persons being equal in essence are put in considerably different conditions, that is, how distinctively the differentiation will separate equal persons from the equal possibilities to participate in specific social relations. If the intensity of differentiation is high, the court will apply the strict test, and in case of low intensity – “the test for rational differentiation” (the test scrutinizing on rational grounds), under which: a) it is sufficient to corroborate the rationality of differentiated treatment, among them, when maximum reality, inevitability or necessity of differentiation is evident; b) Existence of real and rational linkage between objective cause of differentiation and the result of its action” (Decision N1/1/493 of 27 December 2010 of the constitutional court of Georgia on the case “Political Unions of Citizens: “The New Rights” and “The Conservative Party of Georgia”, II-6).

14. Within the scopes of the practice of the constitutional court and specific case, with due regard to the essence of the subject of the dispute, as a result of the analysis of the position held by the Respondent, based on the legal and factual grounds of the case, the court holds that the disputed norm should be assessed by the test “rational differentiation”. Due to the fact that under the disputed norm, differentiation does not occur based on “classic” characteristics, and neither intensity of differentiation is high, the court does not deem it necessary to employ the “strict test”.

15. Representative of the Respondent noted that objective of the legislator when adopting the disputed norm was not to make intentional differentiation between a foreign citizen and a citizen of Georgia. She believes that although the ground for different treatment towards persons indicated in the disputed norm is their citizenship, it is permissible, because the constitution itself permits the difference between them. And in this case, when the difference is made by the legislation, it should be assessed by the test of rational differentiation, and accordingly, the differentiation indicated in the disputed norm is justified. In order to substantiate the abovementioned, the Respondent pointed to necessity and maximum reality for different treatment. In this context, she emphasizes on the grounds and purpose for adoption of the disputed norm. The Respondent believes that with a view to ensuring the public order, adoption of the disputed norm is a preventive measure for observance of the rules for road traffic and avoidance of road accidents and it provides imposition of adequate administrative penalties towards person having committed administrative transgression. In order to achieve the purpose of real prevention of offences, evading the examination establishing influence of alcohol, drugs and psychotropic substances is perceived as the resistance to representative of the law-enforcement body, which, in its turn, speaks about person's attitude towards the rules of the road and public order and makes continuance of driving a motor vehicle by him more dangerous. Accordingly, in such case, deprivation of the driving licence of motor vehicle may, from the part of the State, be deemed as an adequate reaction. As for application of a fine for the same action towards a foreign citizen, without deprivation of the driving licence, this is the accepted practice in Europe. One State may not abrogate the licence issued by another State. Accordingly, imposition of a fine is an adequate reaction for the given action of a foreign country. The Respondent considers that by this argumentation, there exists completely rational linkage between the objective purpose pursued and the result.

16. Representative of the Respondent, in order to endorse her argumentation, indicates that for the purposes of the disputed norms, a foreigner and stateless person should be construed as a person, who holds a driving licence issued by a foreign country. And for the purposes of the norms, which regulate deprivation of a the right to drive of a citizen of foreign country as type of the penalty, a foreigner and a stateless person should be construed as a person who holds a driving licence issued by the Georgia state. She believes that the institute of deprivation of the right to drive in relation to a foreigner is not practically exercised, because Georgia is not het acceded to the respective convention, there is no relevant procedures, which would ensure establishment of international effects.

17. The disputed norm in order to comply with requirements of the test of rational differentiation, it is necessary that the differentiation established by the

disputed norm constitutes a rational means for achievement of the purpose. The constitutional court indicates that generally, deprivation of the right to drive a means of transport is possible to serve the following legitimate aim: assurance of the road safety, exclusion of those dangers, which respective person could pose to the road safety, human life and health.

18. But, at the same time, the constitutional court of Georgia may not share the positions held by the Respondent because of the following circumstances: the Respondent failed to corroborate the essence of differentiated approach existing in the disputed norm, the argument relating to rationality of the differentiation provided by her lacks the ground. The Respondent, in order to justify unequal treatment, stated that the Georgian state cannot deprive the driving licences issued by a foreign country and the different approach is conditioned by this reason. It is noteworthy that this argumentation provided by the Respondent is excluded by the remark of the disputed Article itself, the content of which refers that if a citizen of foreign country or a stateless person fail to voluntarily pay (execute), within the prescribed term, a fine imposed upon him, he will be charged by the interest, and afterwards, in case of failure of fine or the interest thereof, his fine will be change in deprivation of the right to drive a means of auto transport. As the analysis of the disputed norm shows, the norm in itself does not rule out the possibility for deprivation of the right to drive for a citizen of foreign country. The argument provided by representative of the Respondent is also groundless that the State does not have factual possibility to deprive the right to drive of foreign citizens. Conversely, it should be noted that a range of Articles (for instance, Part 6 of Article 125) of the Code on Administrative Offences, for violation of relevant regulations, also envisage deprivation of the right to drive and the differentiation of addressees of this norm does not occur based on citizenship. The argument provided by the Respondent is questioned even in case, when a foreign citizen has a driving licence issued by the Georgian state (which is possible under the legislation of Georgia). Indication about where the applicable legislation envisages deprivation of the right to drive and, simultaneously, does not make the differentiation of addressees based on citizenship, seemingly it implies the license/document certifying the right to drive issued by the Georgian state for a foreign citizens and stateless persons, submitted by representative of the Respondent also lacks the ground. The court points out that applicable legislation do not provide the possibility to read respective norms with such normative meaning. Simultaneously, if imposition of a fine upon foreigners is deemed by the Respondent as being sufficient in order to achieve the mentioned legitimate aim(s), then it becomes more unclear the necessity to impose heavier burden upon a citizen of Georgia as compared to foreigners.

19. It should be emphasized that assessment of the constitutional court of Georgia does not relate to the issue of necessity for tightening or relaxing of administrative penalties imposed upon citizens of Georgia or foreigners for a specific offence, the constitutional court only pointed to the circumstance that the differentiation established by the disputed norm is unclear, unexplained, because of which it contradicts with Article 14 of the constitution of Georgia.

III

Resolutive Part

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

The Constitutional Court of Georgia

rules:

18. To uphold the Constitutional Claim N535 of citizen of Georgia Avtandil Kakhniashvili versus the Parliament of Georgia. To recognize as unconstitutional the following words – “deprivation of the right to drive a means of transport for the term of 3 years, a foreign citizen or a stateless person staying in the territory of Georgia” of the first Part of Article 117 of the Code On Administrative Offences of Georgia with respect to Article 14 of the constitution of Georgia.

19. The unconstitutional norm shall be legally invalid from the moment of promulgation of this judgment.

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

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

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

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

Member of the Board: Konstantine Vardzelashvili,
Vakhtang Gvaramia,
Ketevan Eremadze,
Maia Kopaleishvili.