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THE STANDARD OF SUSPENSION OF THE NORMATIVE ACT (ACCORDING TO THE PRACTICE OF THE CONSTITUTIONAL COURT OF GEORGIA)

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INTRODUCTION

The standard according to which the Constitutional Court of Georgia suspends or does not suspend a normative act has important significance for the issues discussed in this paper. The differences between the standard prescribed under the Article 25 paragraph 5 of the organic law "On Constitutional Court of Georgia", and the normative description that existed before and after June 3 of 2016 is also interesting in this regard. Prior to the change, the suspension of a normative act was possible if "the Constitutional Court of Georgia considered that the normative act may result in irreversible outcomes for one of the parties." After the 2016 reform, the record was changed as follows: "In a case when the Constitutional Court of Georgia considers that the normative act may result in irreversible outcomes for one of the parties, the issue is transferred to the Plenum of the Constitutional Court for discussion, which may suspend the disputed act or respective part thereof until the final decision on the matter will be reached or for a shorter period by the decision of the majority of the composition of the plenum at the distribution session." Based on this clause, it seems that the legislator transformed the standard of irreversible damage to the standard of reassigning the question of the suspension of a normative act to the plenum, and the issue of suspending a normative act by the plenum was left without legislative standard.

In relation to the suspension of a normative act, the practice of the Constitutional Court of Georgia hasusually been todetermine what the question is, whether there is a threat of irreversible damage[1] and in what conditions the right of others (third parties) are being placed.[2] Therefore, we will touch upon the practice of the Constitutional Court of Georgia, regarding what constitutes irreversible damage and what it takes into consideration when determining the interests of third parties. We will also touch upon the issue of the possibility to restitute the right, as far as based on the existence of such condition the Court may refrain from suspending disputed normative act.

1. IRREVERSIBLE DAMAGE

Under irreversible damage, the Constitutional Court of Georgia considers irremediable outcome, the existence of which means the norm may result in the reversible infringement of the right in question; there will not be any possibility to remediate the outcome, even by declaring the norm as unconstitutional;and the person affected may not have a legal possibility to avoid such an outcome.[3] The issue of irreversible damage will be discussed based on the examples of three cases: *Group of Members of Parliament v Parliament of Georgia,*[4] *Citizen of Georgia Levan Gvatua v Parliament of Georgia*[5] and the *Group of the Members of the Parliament and citizens of Georgia Erasti Jakobia and Karina Shakhparoian v Parliament of Georgia*.[6]

In the *Group of Members of Parliament v Parliament of Georgia,"* the Constitutional Court suspended the disputed norms as it considered that it met the standard of irreversible damage in place. In this case, the issue of the merger of the oversight function over the banking sector, which previously fell within the capacity of the National Bank of Georgia, was disputed, according to which the LEPL Financial Oversight Agency of Georgia should have been created. The court at the initial stage has defined the powers that would have been assigned to the Agency according to the Law

1 Protocol of the Constitutional Court of Georgia from 20 May 2008 on the Case №1/452,453 - *Young Georgian Lawyers' Association and Public Defender of Georgia v Parliament of Georgia*, Motivational Part para.2.

2 Protocol of the Constitutional Court of Georgia from 7 November 2012 on the Case №1/3/509 – *Citizen of Georgia SophioEbralidze v Parliament of Georgia*, Motivational Part, para. 9.

3 Protocol of the Constitutional Court of Georgia from 20 May 2008 on the Case №1/452,453 - Young Georgian Lawyers' Association and Public Defender of Georgia v. Parliament of Georgia, Motivational Part para.2.

4 Protocol of the Constitutional Court of Georgia from 12 October 2015 on the Case №3/6/668 – *Group of the Members of the Parliament* (ZurabAbashidze, Giorgi Baramidze, Davit Bakradze and others, in total 39 deputies) *v Parliament of Georgia*.

5 Protocol of the Constitutional Court of Georgia from 25 November 2015 on the Case №1/9/682 – *Citizen of Georgia Levan Gvatua v Parliament of Georgia.*

6 Protocol of the Constitutional Court of Georgia from 17 June 2016 on the Case № 3/4/768,769 – *Group of the Members of the Parliament* (Davit Bakradze, SergoRatiani, Roland Akhalaia, Levan Bezhashvili and others, in total 38 deputies) *and citizens of Georgia Erasti Jakobia and Karina Shakhparoian v Parliament of Georgia*.

on the National Bank of Georgia.[7] Base on the identification and analysis of these functions, the Court defined the negative impact that may be have been caused if the Agency's right to implement these functions had been declared unconstitutional. The negative outcome would have been the equivocal legitimacy of the actions performed by the Agency. The Constitutional Court noted that the main essence of the functional purpose of the Agency representedthe conduct of several controlling and restricting actions (targeted on the financial sector), which could result in a party being unsatisfied with the restrictions. In such a case,the unsatisfied persons/subjects would have the possibility to argue againstthe decisions taken by the Agency,resulting in the existence of the agency beingdeclared unconstitutional, i.e. the Agency would not be entitled to conclude any agreement or give any permission. Such motivation objectively caused a lot of disputes. As a result, the damage would be irremediable indeed, as the legitimacy of the circulationof hundreds of millions of legal currencywould be lost. If the merger went forward, parties would also have the chance to argue for the restoration of damages for the State (Article 42 paragraph 9 of the Constitution of Georgia), which was caused by adecision by anunauthorized person.According to the Court's evaluation, this process could be sodetrimental to the financial system as to destroy it.[8]Hereby it shall be mentioned that current constitutional dispute alsoproceeded under Article 89 paragraph 1 subparagraph "b" of the Constitution of Georgia (Dispute between state institutions of the matter of competence), and according to Article 23 paragraph 2 of the organic law on "Constitutional Court of Georgia," within the named competence, the acceptance of the constitutional claim results in the declaration of the invalidity of the normative act infringing on the competence from the period of its enactment (and not from the time when the decision of the Constitutional Court enters into force).[9]This assessment shows clearly that the source of the irreversible damage identified by the court was real indeed, because anydecision rendered would have full retro action and would result in all respective legal effects.

Citizen of Georgia Levan Gvatua v Parliament of Georgia is the most evident and simple example of irreversible damage. In this case, the plaintiff had beendiagnosedwith "uncertain chronic hepatitis, hepatic cirrhosis, peritoneal dropsy, body care syndrome, portal hypertension," as a result of which he needed a liver transplant. The disputed paragraph 2 of Article 18 of the law "on the transplantation of human organs" narrows the circle of donors to those with afamilial connection, and for the plaintiff none of the persons prescribed by the law was compatible for a liver transplant (it should be noted thatpostmortem donation is not allowed in Georgia). The only chance to save the life of the plaintiff was to find a donor with familial connection or emotionally close relationship. Deriving from the actual health condition of the plaintiff, it was evident that the individual's condition would worsen before the Constitutional Court ruled on the case, and the existing norm could have even resulted in the death of the plaintiff before the final decision of the Court. Consequently, the court did not waste time debating the irreversible damage and suspended the force of the disputed

7 Protocol of the Constitutional Court of Georgia from 20 May 2008 on the Case №1/452,453 - *Young Georgian Lawyers' Association and Public Defender of Georgia v Parliament of Georgia*, Motivational Part para.14.

8 Ibid. Motivational Part , p. 20

9 Ibid. Motivational Part , p. 16

norm "which excludes the donors that have anemotionally close relationshipwith the recipient from the circle of donors from whom the liver may be taken."[10]

In the case *Group of the Members of the Parliament and citizens of Georgia Erasti Jakobia and Karina Shakhparoian v Parliament of Georgia,*the Court did not suspend the force of the disputed norms, but defined that, for the purpose of the paragraph 5 of Article 25 of the law on "The Constitutional Court of Georgia," the existence of irreversible damage means the irreversibility of the outcomes resulting from the suppression of the right after a decision by the Constitutional Court. The court explained that "in case of a different definition there would be a circumstance where receipt for deliberation of any constitutional claim would create the basis for suspension of the norms under question, because of the doubt that the disputed norms suppress the constitutional right (opposes to constitutional statute)."[11]

2. PUBLIC INTEREST

The Constitutional Court always notes that when deliberating on the suspension of a disputed normative act, public interest must be taken into consideration — "the rules of conduct prescribed by the normative act are aimed at regulating the respective spheres of public life and attaining particular legitimate purposes, protection of private and public interests." In certain cases, the suspension of the disputed normative act may constrain private, as well as public interests and damage the value for the protection of which the act was adopted in the first place,"[12] "in each case while deciding on the suspension of disputed norm, the court shall assess the danger of infringement of the rights of others as well."[13] Consequently, the issue of public interest is considered a significant part of the standard for the suspension of a normative act. In the practice of the Constitutional Court, there are frequently cases when the norm is not suspended based on this principle. This issue will be discussed based ontwo important cases heard by the Constitutional Court:"*Citizens of Georgia Mtvarisa Kevlishvili, Nazi Dotiashvili and Marina Gloveli v Parliament of Georgia*[14] and *Citizen of Georgia Levan Gvatua v Parliament of Georgia.*

10 Protocol of the Constitutional Court of Georgia from 25 November 2015 on the Case №1/9/682 – *Citizen of Georgia Levan Gvatua v Parliament of Georgia*, Resolution Part p.2.

11 Protocol of the Constitutional Court of Georgia from 17 June 2016 on the Case № 3/4/768,769 – *Group of the Members of the Parliament* (Davit Bakradze, SergoRatiani, Roland Akhalaia, Levan Bezhashvili and others, in total 38 deputies) *and citizens of Georgia ErastiJakobia and Karina Shakhparoian v Parliament of Georgia*.

12 Decisionof the Constitutional Court of Georgia from December 14, 2014 on the Case № 3/2/577 – *Non-profit (non-commercial) legal entity Human rights Education and Monitoring Center (EMC) and citizen of Georgia VakhushtiMenabde v Parliament of Georgia*."

13 Protocol of the Constitutional Court of Georgia from 7 November 2012 on the Case № 1/3/509 – *Citizen of Georgia Sophio Ebralidze v Parliament of Georgia.*

14 Protocol of the Constitutional Court of Georgia from 1st June 2016 on the Case № 3/2/717 – *Citizens of Georgia Mtvarisa Kevlishvili, Nazi Dotiashvili and Marina Gloveli v Parliament of Georgia*.

In the case of *Citizens of Georgia Mtvarisa Kevlishvili, Nazi Dotiashvili and Marina Gloveli v Parliament of Georgia*, a number of norms within theLaw on Common Courts were disputed, specifically those concerning theappointment of judges by the High Council of Justice of Georgia in city (district) courts and appellate courts (the plaintiffs were participants in a competition for judgeships, and their applicationswere rejected several times). As a result of the suspension of the disputed norms, the procedure of the appointment of judges was practically halted before the final decision of the Constitutional Court. The Constitutional Court considered that the suspension of the disputed norms created thepossibility that important public interest and interests of third persons would be unjustly obstructed, namely "the suspension of the norm may have a great impact not only on the rights of candidates for appointment, but firstly on individuals and parties to exercise their rightsfor legal proceedings. The resulting overload on the courts and the obligation to provide timely justice to the parties shall be taken into consideration. In a situation, where according to the representative of the High Council of Justice, the number of cases has doubled in recent years and each judge has hundreds of cases to deliberate, the suspension of the norm until the decision of the Constitutional Court will worsen the existing situation in terms of the overload within common courts."[15] This factor has been the main argument for not suspending the disputed norms.

Even some of the judges disagreed with the Court's argument: they noted that "the interest to have his/her case heard by the judge, who is appointed according to a constitutional standard, derives from the right of fair trial of each person applying to the court. The appointment of a judge by an infringement of the constitution may significantly contribute to putting the authority and qualification of him/her, and the court system in general, under doubt. This doubt will get stronger in case the constitutional claim is approved and the procedure for appointing judges is ruled as unconstitutional."Accordingly, in this case, considering the unobstructed compilation of the pool of judges in the system of common courts as the factor facilitating the realization of the right to fair trial does not have any objective justification."[16]

According to our opinion,the larger issue of public trust, which in this case is trust in the court system, should take priority. It is understandable that the right to speedy justice is also significant, but it is not as important as public trust in the judicial system. When a legitimate questions arise on the procedure forming the common courts (city/district courts, appellate courts), it is crucial to suspend the respective process. If we truly take into consideration all the implications, the danger of irreversible damage increases in comparison to the results of proclaiming these norms as unconstitutional, and the result is indeed grave — the qualifications of the judges appointed by this procedure,putting their rulings under question. Unfortunately the court has not considered this result because of the simple reason, i.e. that the decision of the Constitutional Court would not have retroactive power and everything would remain as it was (even if current norms would have been proclaimed as unconstitutional). This logic is understandable, but it is only one side of the coin (legal outcome in terms of material, tangible understanding) and on the other side is the issue

15 Ibid. Motivational Part, p.10.

16 Ibid. The distinct opinion of members of the Constitutional Court of Georgia Ketevan Eremadze and Maia Kopaleishvili, p. 8.

of public trust in the judicial system, which definitely will be lost if the Constitutional Court rules that the disputed norms are unconstitutional. In this case, it would result in sitting judges in common courts being appointed through an unconstitutionalprocedure and neither our courts nor our judges deserve such a "label!"

In the case of *Citizen of Georgia Levan Gvatua v Parliament of Georgia,*the object of protection as public interest (legitimate purpose) of the disputed norm was toprevent the illegal selling of organs.[17] National legislation envisages the possibility of a living person donating an organ, and the circle of donors is limited by the disputed norm by a genetic or established social-legal relationship between the donor and recipient.

In that case, the Court fully agreed on the existence of public interest, and the damage that could result if the disputed norm was suspended. The Court defined two conditions —the suspension of the disputed norm does not mean the legalization of the trade of human organs, as the acting legislation envisages several mechanisms for the prevention the trade of human organs; and the plaintiff is not asking for the suspension of entire norm, but rather the suspension of the normative essence of the disputed norm, which restricts donors to those with a familial or emotionally close relationship with the recipient.

The court considered that a significant guarantee for the prevention of trade of human organs, and therefore theprotection of this particular public interest, had been created with the creation of the transplantation council and transplantation information center, established by Articles 28-29 of the Law on the Transplantation of Human Organs,which control the legitimacy of the donation at different stages of the process. Without the agreement of the transplantation council, it is impossible to transplant an organ from a living person. Concerning this particular case, the Court found that the council will still have the power to protect public interest even when the normative essence of the disputed norm is suspended.

In this particular case, the plaintiff was the recipient himself/herself, who needed the liver transplantation, and the Constitutional Court made its final decision taking into consideration that the "life of a human represents the fundamental constitutional value, without which, practically, there are no grounds for any of the constitutional rights. Before the final decision of the Constitutional Court on this case, the disputed norm may cause the irreversible worsening of the health condition of plaintiff, including death. In the framework of the existing legal regulation, the suspension of the disputed norm does not create such danger that would cause an objective observer to reason that the public interest of the disputed norm prevails over the interest of life and health of the plaintiff. As a consequence the arguments detailed above, the Constitutional Court considers that the claim of the plaintiff shall be satisfied and the normative essence of the disputed norm, which excludes

17 According to the article 52 of the law on "the transplantation of the human organs" the transplantation of human organs is prohibited, and according the article 1351 of the criminal code such act represents a crime.

from the circle of donors (from whom the liver may be taken) persons having emotional relationship with the recipient, shall be suspended."[18]

Judges having the coinciding opinion on this case indicated that defining the existence of the emotional relationship between particular persons represents an assessable category. The transplantation council in particular cases is the one approving the existence of individuals prescribed by the disputed norm, and it does not have possibility to study in detail and objectively check the existence of an emotional relationship between non familial persons or the intensity of such relationship,or to identify abuse of the mentioned right. Despite this, for the purpose of the practical and actual implementation of the protection of life for individualsin a similar situation as the plaintiff, the judges with coinciding opinions considered that it is advisable before the final decision of the Constitutional Court to suspend the disputable norm for those recipients for those who would die without a liver transplant anddo not have a donor among the circle of persons as defined by the disputed norm. Hence, according to the judges having coinciding opinion, the part of the disputed norm should have been suspended that prohibits the persons who have close emotional relationship to be donors in cases when the recipient does not have the donor prescribed under the paragraph "b" of the article 18 of the Law on the Transplantation of Human Organs.[19]

3. THE ACTUALITY OF THE DANGER

The Constitutional Court in its practice also determines the actuality of the danger connected to the relevant normative act. For a normative act to be suspended, it is necessary to determine that the disputed act is capable of resulting in damage for the plaintiff before Court makes its final ruling. While the suspension of the act, the Constitutional Court has not deliberated in details the issue of actuality of the damage caused by the disputed normative act, this issue was mentioned by it in the case "on the appointment of judges" – where it noted that "the mentioned danger shall be real, inevitable, concrete and not of abstract/hypothetic nature."[20]

In our view, this part of the standard of suspension of a norm will be considered satisfied from the initial stage if the Constitutional Court decides to accept the constitutional claim for deliberation, because the subparagraph "a" of the paragraph 1 Article 39 of the Lawon the Constitutional Court of Georgia initially excludes *aqtio popularis*— citizens of Georgia, individuals living in Geor-

18 Protocol of the Constitutional Court of Georgia from 25 November 2015 on the Case №1/9/682 – *Citizen of Georgia Levan Gvatua v Parliament of Georgia*, Motivational Part p.14.

19 Ibid. Coinciding opinions of members of the Constitutional Court Lali Phaphiashvili and Otar Sitchinava, p. 10.

20 Protocol of the Constitutional Court of Georgia from 1st June 2016 on the Case № 3/2/717 – *Citizens of Georgia Mtvarisa Kevlishvili, Nazi Dotiashvili and Marina Gloveli v Parliament of Georgia*, Motivational Part p. 5.

gia and legal entities of Georgia, if they consider that the rights and freedoms stipulated under the chapter two of the Constitution of Georgia are infringed or may be infringed.According to the standard developed by the Constitutional Court of Georgia, the existence of inevitable damage shall be defined and then the reality of such damage. When considering the reality of the damage, the probability of the outcome is considered as well as the inevitable outcome.

4. IMPOSSIBILITY OF ERADICATION OF THE IRREMEDIABLE DAMAGE

According to the practice of the Constitutional Court, one factor taken into consideration when weighing the standard of suspension of the disputed normative act is the impossibility of the eradication of the irremediable damage. This criterion implies that even in case of the approval of the constitutional claim, the plaintiff would not have the possibility to restore his/her legal interest.

In the case *Citizens of Georgia Mtvarisa Kevlishvili, Nazi Dotiashvili and Marina Gloveli v Parliament of Georgia,* the Constitutional Court noted that according to existing legislation, the plaintiff shave the right to participate in the competition again — "in case of the approval of the claim by the Constitutional Court, plaintiffs will still have possibility to participate as judge applicants in the competition, in the framework of which the High Council of Justice will be obliged to justify the decision of appointment or rejection and at the same time there will be the possibility to appeal this decision."[21] Consequently, the Constitutional Court considered that the decision on thiscase will have the effect of restitution of theright and plaintiffs' motion on the suspension of the disputed normative act wasunjustified.

In parallel with these arguments, the Constitutional Court took into consideration the constitutional amendment of October 15, 2010, according to which (paragragh 2 of Article86 of the Constitution of Georgia) judges are appointed to positions for life (until the pension age of 65 years). This circumstance in the common courts system (city/district courts, appelatte courts) decreases the possibility of creating vacancies, therefore the Constitutional Court assessed plaintiffs' participation in the competition as candidates. In the motivational part of the decision, this issue is described "at the same time, arranging competition for the appointment of judges relates to the creation of a vacancy, which will exist also in the future in case of the termination of the judge from his or her postbecause of the expiration of term or other reasons. Even before the final decision of the court, these vacancies will be fully occupied, this can not result in inevitable damage for the plaintiff, as the competition of selecting judges, as a rule, takes place twice a year, currently the competition has been announced for 65 vacancies in the system of common courts, and from May 2016 till

21 Ibid. Motivational Part p. 8.

December there will be 29 more vacancies due to the endof the term of sitting judges; in 2017 the number will be 41." Based on these numbers, the Constitutional Court foundthat the plaintiffs, as candidates, could have the possibility to restore their right even in the case thattheir claim was approved by the court.

Judges having distinct opinion on this case did not agree. They argued that before the final decision on the case, there was a possibility that the existing competition (for 65 vacant places) would be finalized, including the unjustified rejection ofthe candidacy of the plaintiffs. It would not be possibe to avoid thisinfringement of rights, even with the final decision on the case, as even in case the plaintiffs'' case was approved by the Court, it would be impossible to review the result of the competition and appointments. Hence, members of the Constitutional Court having a distinct opinion considered that there were grounds to claim the irreversible nature of the infringment of plantiff's right.

Judges having a distinct opinion noted that they do not agree with the argument that vacancies of judges would exist in the future and therefore they would have the chance to participate in the competition again. In their opinion, the rejection to the appointment within the framework of a competition already created irreversible results. If thedisputed norms were declared unconstitutional, the competition would not have started again for the same position (in case when the position would have been filled after competition) and the restoration of legal outcomes of the unjustified rejection would not be possible. The judges having distinct opinion also indicated that the number of vacancieswill be reduced in the future, whichmeans that plaintiffs' opportunities to be hired in adesirable position decrease significantly. In their view "the creation of irremediable outcome does not necesserily mean the full, irreversible disappearance of the right. If the disputable norm may result in the diminishmentof the right and the irreversible decrease of the possibility of its realization, it also creates irremediable outcomes. The fact that the by virtue of the disputable norm plaintiffs do not entirely lose the right prescribed under the Article 29 of the constitution, on its ownequalsinexistence of the irreversible outcome. If the disputable norm diminishs the right, by eithersignificantly or irreversibly decreasing its application, it creates irremediable outcomes as defined by "paragraph 5 of the Article 25 of the organic law on the Constitutional Court of Georgia."[22]

22 Ibid. The distinct opinion of members of the Constitutional Court of Georgia Ketevan Eremadze and Maia Kopaleishvili, p. 6.

5. STANDARD OF SUSPENSION OF THE DISPUTED NORMATIVE ACT AS ILLUSTRATED BY THE CITIZEN OF GEORGIA GIORGI GACHECHILADZE V THE PARLIAMENT OF GEORGIA

Citizen of Georgia Giorgi Gachechiladze v the Parliament of Georgia[23] the paragraphs 1 and 3 of the Article 57[10] of Law on Environmental Protection were challenged as unconstitutional based onparagraphs 3 and 4 of the Article 37 of the Constitution.[24] According to the disputed norms, between the Ministry of Energy and interested entity there may be stipulated an agreement based on which within the term defined by the agreement the interested person is exempted from the civil and administrative liability before the state and local selfgovernmental institutions for the actions implemented in the sphere of using natural resources and environmental protection. Within the period defined by the agreement, the person is exempted from paying fines, compensating for damages, fulfilling of any kind of obligation or payment of taxes according to the conditions prescribed by the agreement (paying certain amount of money or fulfilling other obligation).[25] The agreement prescribed by the disputed norms could have been concluded to coverpast, as well as for future, activity. Hence a person was given the legal possibility to inflict incalculable damage tothe environment, which wouldhave otherwise been consider a crime and would have been resulted in catastrophic outcome for the environment. Meanwhile the condition must be taken into consideration that the agreement was concluded not regarding the particular action of the interested person, but with the period of his activity, in relation to the possible enormous amount of offences. The law did not prescribe any obligation for state institutions to check the offences of the interested person within the agreed period before the conclusion of the agreement and to assessthe amount of damage to the environment. Also, according to the paragraph 4 of Article 5710 of the Law on Environmental Protection "it is forbidden to check the action carried out in the sphereof the usage of natural resources and environment protection, during the period envisaged by the agreement." Based on this, the law gave the possibility to conclude an agreement in such a manner that it was not known what would be the exact amount of the prospective offence on behalf of the interested person. Moreover, the action carried outby the person was not checked even after the conclusion of the agreement. Hence, the law envisaged, for the compensation from the state, exclusion from the liability with regard to any amount of offences.

23 Decision of the Constitutional Court of Georgia from 10 April 2013 on the Case № 2/1/524 – *Citizen of Georgia Giorgi Gachechiladze v the Parliament of Georgia*.

24 According to the paragraph 3 of the article 37 of the Constitution of Georgia "everyone has the right to live in the environment safe for health, use natural and cultural resources. Everyone is obliged to care about natural resources and cultural environment." Mentioned constitutional regulation on one hand reaffirms the core right of a person to live in a healthy environment, and on the other hand, prescribes the duty of each member of the society to take care of natural and cultural environment. "The state taking into consideration the interests of the existing and future generations provides protection of the environment and rational usage of natural resources, sustainable development of the country according to the economic and ecological interest of the society for ensuring safe environment for the health of human."

25 This regulation was enacted by the Georgian legislator during the total deregulation policy implementation; this "notion" was a brutal part of this policy.

Such norms were disputed by the plaintiff who claimed the application of Article 25 Law onthe Constitutional Court of Georgia and the Constitutional Court in its motivational part of the protocol refused the suspension of disputed norms: "With regard to the claim of suspending the disputed norms it shall be stated that plaintiff did not present any argument to the court which would gave the Constitutional Court the possibility to conclude that the disputed normatuve act could result in irreversible outcomes for the plaintiff. Therefore, the claim of plaintiff is unjustified."[26] It shall be noted that the Constitutional Court of Georgia by its decision declared these norms as unconstitutional. The unconstitutional norms from the initial hearing (28.12.2012) until the final decision (10.04.2013) remained in force for four months.

In our opinion there was an unconditional ground for the suspension of the disputed norms. The danger of irreversible damage was unequivocal, and the damage in this case influenced the significant merit – the environment, which may be very difficult or impossible to restore (unfortunately there is no data on how many such agreements were concluded within the abovementioned four months). The existing irremediable danger was real — and the reality was shown by the fact that, based on this norm, the agreement could have been concluded at any time and it would have resulted inirreversible, unassessed damage to the environment. Also there was no effective measure for restoring this damage. As for the effect of the suspension of the disputed norm for third parties and public interest: in this case there was no such merit on the other side of the argument, because the environment represents such an interest by itself. In ouropinion, this case is not far from the case on "transplantation of human organs" in terms of sensitivity, where the irreversible damage was related to the life of a person. Also, in this case the sensitive merit was in place, which unfortunately was not thought through by the court. The decision not to suspend disputed norms in this case was wrong and unacceptable, however anegative experience is also worth taking into considerationand we shall outline conclusions based on this, such appropriate conclusion may be the following practice,which was developed in the Constitutional Court after 2013.

It was evident from the begining that the legislator by this disputed norm refused the prevention of environmental offence, it "indulged" the interested person, by which it forgave the already committed offences as well as "sins" to be committed in future. By virtue of a similar mechanism, granting the wide title to influence the environment to an individualwas in conflict with the positive obligation of the state to ensure the protection of the environment in order to preserve a healthy environment for its citizens.

26 Protocol of the Constitutional Court of Georgia from 28 December 2012 on the Case № 2/3/524 – citizen of Georgia Giorgi Gachechiladze v. the Parliament of Georgia, Motivational part p. 2.

CONCLUSION

In conclusion we can state that,according to the practice of the Constitutional Court of Georgia, the standard for thesuspension of a disputed normative act is as follows:

- The danger of irremediable outcome for the plaintiff shall be in place, the eradication of which will not be possible even in the case the claim was approved;
- The real, effective, operational and not illusory measure must not exist for restoration of the right (irremediable damage);
- The existing irreversible danger shall be real, unavoidable and concrete;
- The suspendion of the disputed act shall not cause unjustifiable, unequal limitation of the rights of third parties and/or public interest;

It shall be noted that for the suspention of the disputed normative act all the conditions mentioned above shall be in place cumulatively and not separately.

As we see, there is a very strict, high standard established for the suspension of the disputed normative act, which is one of the reasons why this mechanism is rarelyusedbythe Constitutional Court,[27]is the complexity and high standard of its usage.

The suspension of the disputed norm is used only in case when there is a real danger that the application of the disputed norm will cause irreversible outcomes for the party. Therefore, the institute of the suspension of disputed norm is aimed to prevent the unavoidable and irreversible danger, which may be subsequent to the application of the disputed norm and the redressing of which may not be attained by the declaration as unconstitutional by the Constitutional Court (such irreversible damage shall be evident and there shall not be in place the risk of unjustified limitation of the interests of third parties and public).

27 Decision of the Constitutional Court of Georgia from December 24, 2014 on the Case № 3/2/577 - Non-profit (non-commercial) legal entity Human rights Education and Monitoring Center (EMC) and citizen of Georgia Vakhushti Menabde v Parliament of Georgia", Motivational Part p. 34.

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