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RECENT JURISPRUDENCE OF THE CONSTITUTIONAL COURT OF GEORGIA ON THE RIGHT TO LIBERTY

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On 6 April 2009, the Second Board of the Constitutional Court of Georgia delivered judgment on the case *the Public Defender of Georgia v. the Parliament of Georgia.*

In this case, the claimant disputed the constitutionality of Article 142.1(f) of the Criminal Procedure Code of Georgia (hereinafter referred to as the "CPC") in terms of Article 18.1 and the first sentence of Article 18.3 of the Constitution of Georgia. The CPC Article 142, entitled "grounds for arrest", defines the legal preconditions which enable the arrest of a person suspected in commission of a crime. One of the grounds provided for by the impugned provision reads as follows:

"Arrest of a person suspected in the commission of a crime can be effected on the basis of any of the following grounds:

...

f) a person may flee."

The given case is of interest in the light of the preceding judgment #2/3/182,185,191 of the Constitutional Court of Georgia, delivered on 29 January 2003, on a similar issue. In particular, the previous decision ruled on the unconstitutionality of Article 142.2 of the CPC which had similar contents as the provision challenged by the Public Defender of Georgia in the present case. It was ruled that the impugned provision in the previous case had interfered with such a fundamental human right as physical liberty.

The present impugned provision was introduced following the judgement #2/3/182,185,191 on 29 December 2006 by the Constitutional Court. The Constitutional Court, accordingly, had to decide whether the legislator ushered the repealed provision back in a reincarnation. If the Constitutional Court decided that the impugned Article 142.1(f) of the CPC contained similar contents of Article

142.2 that was previously held unconstitutional, then, in accordance with Article 25.4[1] of the Organic Law of Georgia "On the Constitutional Court of Georgia", the Court would not admit the constitutional claim for the consideration of the merits and would invalidate the impugned provision straight away at the administrative hearing. If the Board examining the case identified substantial similarity between the present impugned provision and the repealed unconstitutional provision, and did not agree with the legal position taken in #2/3/182,185,191 judgment of 29 January 2003, then the Board would relinquish jurisdiction in favour of the Plenary Court under Article 21[1] of the Organic Law of Georgia "On the Constitutional Court of Georgia".

There has been a view expressed, notably by Professor Otar Gamkrelidze, in academic circles , that the Constitutional Court failed to duly address the issue at stake in the judgment. As mentioned earlier, the issue that the court is to examine at an administrative hearing, and not to be discussed during the consideration of merits, is whether the new provision revives normative contents of the unconstitutional provision repealed in 2003. Accordingly, the decision about the issue preceded the adoption of the final judgment of the Constitutional Court and was enunciated in #2/1-415 Recording Notice of 29 May 2007. At the administrative hearing, the Constitutional Court engaged in comparative analysis of Article 142.2[1] of the CPC, which was held unconstitutional in 2003, and Article 142.1(f) challenged by the Public Defender before the Constitutional Court. The Court, furthermore, pointed out the legal arguments, developed in judgment #2/3/182,185,191 of 29 January 2003 of the Constitutional Court, that led to holding Article 142.2 of the CPC unconstitutional.

As it is evident from judgment #2/3/182,185,191 of 29 January 2003, the claimant, the Public Defender of Georgia, made an observation before the Court that Article 142.2 of the CPC enabled the authorities to arrest a person on the account of "other data" that is different from the grounds provided in Article 142.1. Such a provision, it is argued, left room for arbitrariness and allowed arrest of a person on the ground of "other (unverified) data" with a formal motive that the identity of the person being arrested is unknown or that he/she has no permanent residence. The failure of the provision to meet the standards of legal writing was also pointed out by the representative of the Parliament of Georgia (the respondent).

The Constitutional Court in its judgment of 29 January 2003 examined the constitutionality of grounds of arrest based on "other data raising a doubt as to the commission of a crime by a person". The Constitutional Court held that "the Constitution of Georgia did not authorise the possibility of arrest on the ground of 'other data'; these data can be in the basis of a doubt and not the restriction of liberty" The Constitutional Court also pointed out that the wording "raising a doubt as to the

[1] Article 142. Grounds for arrest 1. A person suspected in the commission of a crime can be arrested if there are the following grounds present:
a) a person was caught when committing or upon the commission of a crime;
b) eyewitnesses, including victims expressly incriminate a person in the commission of a crime;
c) a clear trace of a committed crime is found on or by a person or on his/her clothes;
d) a person absconded after the commission of a crime but was identified by a victim afterwards;
e) a person is issued with a "wanted" act.
2. If there are other data, which substantiate holding a person suspect in the commission of a crime, this person can only be arrested in case he tried to abscond, he/she has no permanent residence or his/her identity is unknown.
3. A person set free after arrest cannot be repeatedly arrested on the account of the same doubt.

commission of a crime by a person" was dubious and it was unclear whether the legislator referred to a crime already committed or the possibility of the commission of a crime in future as well, as the first part of the same Article had an express answer to this question. The Constitutional Court also stated that the wording of Article 142 of the CPC, "does not have a permanent residence, or his/her identity is unknown", could be deemed compatible with the purpose that could motivate arrest of a person. The Constitutional Court also assessed the legal surroundings in which the provision used to be applied. In particular, the Court examined Article 142 of the CPC, "jointly with the Articles related to the 12 hour arrest term, the status of the arrested person and safeguards afforded to him/her. Neither the parties nor the Court examined the constitutionality of arrest in a situation where "an individual was trying to abscond".

Based on the analysis above, the Second Board of the Constitutional Court adopted Recording Notice #2/1-415 on 29 May 2007. Under this Recording Notice, the Constitutional Court held that Article 142.1.f was not substantively analogous to Article 142.2, which was held unconstitutional in 2003. In particular, unlike the unconstitutional norm, the impugned provision

1) does not allow ambiguous interpretation of the term 'suspect'. The express wording bearing the reference to "a person suspected in the commission of a crime" excluded any doubts as to who was to be implied therein – a person suspected in the commission of a crime or any person that could commit a crime.

2) does not allow the arrest of a person "on the basis of other data". It refers in express terms to a ground for arrest which is related to the possibility that a person may escape.

3.) does not provide for any purpose different from Article 141 of the CPC.

The Court also pointed out that following the Constitutional Court's judgment of 29 January 2003, the Parliament of Georgia effected a few amendments in the Criminal Procedure Code. The legal surroundings in which the impugned provision had to operate have accordingly changed. In particular, the 12 hour term during which an arrested suspect did not enjoy any status and deprived of legal protection was abrogated. At present, immediately upon arrest, one is given the status of a suspect and can avail of legal safeguards afforded by law.

As the impugned provision was not considered to be analogous to the one held unconstitutional, there was, accordingly, no ground to hold the impugned provision unconstitutional under Article 25.4[1] of the Organic Law of Georgia "On the Constitutional Court of Georgia".

The Board found that the normative regulation through the impugned provision, which defines the possibility of arresting a suspect, was related to the right to liberty guaranteed by Article 18 of the Constitution of Georgia. In the judgment of 29 January 2003, the Constitutional Court did not expressly pronounce itself on the constitutionality of arrest on the assumption that a person "might flee" ("was trying to escape"), which otherwise would have enabled the Second Board of the Constitutional Court to examine the contents of the impugned provision in the present case from the abovementioned perspective. The matter, accordingly, was not adjudicated upon by the

Constitutional Court in 2003, and, in the present case, the Second Board admitted the constitutional claim for the consideration of the merits.

Professor Gamkrelidze expressed an opinion that the terms "was trying to escape" and "may flee" have analogous implication. Accordingly, the impugned provision, provides the same normative regulation as did the provision held unconstitutional. Stemming from the abovementioned view of Prof. Gamkrelidze, the Constitutional Court should have held the impugned provision unconstitutional right at the administrative hearing.

In the Recording Notice, the Court engaged in discussion not about the substantive similarity of the terms "a person was trying to abscond" and "a person can flee", but the normative regulation of the aforementioned terms. The wording "a person was trying to abscond" existed within the following normative regulation:

"If there are other data which substantiate holding a person suspect in the commission of a crime, this person can only be arrested where he/she tried to abscond, he/she has no permanent residence or his/her identity is unknown".

As mentioned above, the important factor in this regard is to understand which person is implied therein. The Constitutional Court explained in the judgment of 2003 that it was impossible to make conclusions from the existing wording. The wording "a person may flee" exists in a totally different normative setting: "Arrest of a person suspected in the commission of a crime can be effected if there is any of the following grounds:…f) a person may flee." It is evident that the legislator implies the possibility of arrest of a person suspected in the commission of a crime. Obviously, the above two normative regulations differ from each other and this was the issue to be examined by the Constitutional Court. Even if the Legislator had not introduced a new wording "a person may abscond" and had left the previous formulation "a person was trying to escape" intact, the unconstitutional provision and the impugned norm would still have been different in terms of substance as they would have operated in different normative settings.

It is evident from the abovementioned, how meticulously the Constitutional Court had dealt with the issue in its Recording Notice. The opinion that the Constitutional Court failed to address the issue appropriately in its judgment is likewise unsubstantiated. The Constitutional Court in its judgment, which is an outcome of the consideration of the merits, would not repeatedly discuss those issues relevant for an administrative hearing and already resolved in the relevant document (Recording Notice).

As for the regulation afforded by the impugned provision, the claimant, the public defender, believes that there must be certain amount of doubt during arrest. This will enable the Court to decide on the application of a preventive measure when an arrested person is brought before it. The standard of a reasonable doubt would not allow law-enforcement officers to act arbitrarily. The claimant believes that the impugned provision being the ground for arrest itself gives rise to a reasonable doubt as to the commission of the crime by that particular person. In the Public Defender's view, the grounds for arrest as provided by Article 142.1 of the CPC generate a reasonable

doubt, whereas the ground for arrest provided in the impugned provision does not give rise to a reasonable doubt when it comes to a person concerned, let alone an objective observer. The condition that Article 142.1 of the CPC defines the ground for arrest of "a person suspected in the commission of a crime", and not of any person, is argued to be related to the legislator's intention to separate "a suspect" from "an accused person". The Public Defender observes that despite the aforementioned wording, an officer competent to arrest is not supposed to have a reasonable doubt as to the involvement of a person in a particular crime. Such an arrest is accordingly unsubstantiated and unconstitutional.

The Constitutional Court of Georgia requested statistical data of the number of appeals on arrests based on the impugned provision and the decisions taken with regard to those appeals from the Supreme Court of Georgia. The latter was interesting in terms of the interpretation of the impugned provisions by the courts of the general jurisdiction. The Constitutional Court was particularly interested in whether the impugned provision was understood in practice to allow arrest based solely on the possibility of absconding without any reference to a reasonable doubt. According to the statistical data received from the Supreme Court, the courts of general jurisdiction have never ruled on unsubstantiated arrest. Moreover, the issue has never been discussed before the courts of general jurisdiction as not a single case of arrest effected on the basis of the impugned provision has ever been appealed against. The Public Defender observed before the Court that the appeal procedures are so complex and inefficient that it is not worth making use of them despite the fact that they allow compensation for illegal and unsubstantiated arrest.

In its judgment of 6 April 2009, the Constitutional Court examined the notion of "liberty" in Article 18 of the Constitution of Georgia in a narrower sense than it can imply if interpreted literally. In the Court's opinion, the right guaranteed by Article 18 is not related, e.g., to the freedoms of speech, religion, or information protected by other articles of the Constitution. The Court observed that the liberty in this context "implies one's physical liberty, one's freedom to move freely as one wishes, to be or not to be at some place. An individual's liberty is his/her freedom of movement in a narrower sense. However, the degree and seriousness of interferences within these two freedoms are different. The limitation of the right to liberty is more grievous and the Constitution accordingly provides for special safeguards against it." The Court pointed out that it is the authorities' obligation to make sure that the interference with the right is the last resort only.

While the Constitutional Court examined the right within the higher degree of protection, the Court did not consider it to be an absolute right. The Court stated that despite the rigid legal requirements of the Constitution, it is still possible to interfere with the right. Also constitutional standards are stricter as interference with the right gets more intensified. The most intense form of interference with the right is the deprivation of liberty and it sets major obstacles and sometimes excludes the possibility of exercise of other constitutional rights altogether.

Given the fact that the impugned provision determines the ground for arrest, i.e. the deprivation of liberty, the Constitutional Court examined it in terms of the first sentence of Article 18.3, both formally and substantively.

The legislative reservation made through Article 18 of the Constitution of Georgia that a person can only be arrested in the cases defined by law implies that the regulation of the aforementioned issue is the sole prerogative of the legislature. Regulation through the act of another branch of power would formally amount to the breach of the Constitution. The impugned provision is a norm of the CPC which under the Law of Georgia "On Normative Acts" is a legislative act and can accordingly be deemed "a case defined by law". Accordingly, the impugned provision is in full compliance with the formal wording of Article 18.3 of the Constitution.

If the Constitutional Court had engaged in the formal legal evaluation only during the examination of the interference with the right to liberty, it would have left the legislator with much room for arbitrary action. The legislator may define statutory interferences with the said right which would amount in unjustified and disproportional interference with the right and would render it into a fiction. The Court noted that "While arrest is a less grievous interference with liberty than, e.g., the preventive measure – detention provided by the CPC –there must be all the same a solid constitutional threshold in place that marks the permissible boundary for interference with a basic right". It should be noted, however, that this threshold is lower than in the cases of far more grievous interferences with the basic right~. In the Court's opinion, stemming from the principle of proportionality, any interference with a right must pursue a legitimate aim and be a proportional means for attaining this aim.

In the given case, the legitimate aim of the interference with the right was the administration of justice. Accordingly, the Court faced a task to establish whether the regulation through the impugned provision was a means of fulfilment of the aforementioned objective; did it place unnecessary burden on a person limited in his/her rights and could the impugned provision leave room for arbitrariness on the part of the law enforcement agencies?

The Constitutional Court did not examine the impugned provision in isolation, but jointly with other related provisions in order to find out whether it permitted the arrest of a person suspected in the commission of a crime or any person. In order to establish who can be considered "a suspect" whose arrest can be effected, the Court referred to Articles 12, 44.23[1], 141 etc. On the basis of overall analysis of the said Articles, the Court found that "a suspect" who can be arrested is a person 1) "who can be reasonably suspected that he/or she committed an offence criminalised by the Criminal Code of Georgia", but this doubt is not sufficient for laying charges; 2) suspected crime is punishable by deprivation of liberty; 3) there is at least one aim sought by arrest (the person continues criminal activities, destroys evidence *etc.*); and 4) in light of the aforementioned there is a ground for arrest stipulated by the Articles of the CPC, including the impugned provision.

In the Court's view, arrest is a law-enforcement official's right and not an obligation to arrest any person who raises certain suspicions. To be legal and substantiated for an arrest, there must be the following preconditions: a reasonable doubt in the commission of a crime, ground and purpose for arrest. Until present, Article 72 of the CPC allows holding a person as a suspect through a prosecutor's resolution without the deprivation of liberty. The Court held accordingly that forming of a doubt is not independently linked with arrest and the status of a suspect.

In the judgment, the Constitutional Court separated those circumstances which can give rise to a reasonable doubt from those on which arrest can be grounded. In the Court's opinion, Article 18 of the Constitution requires that the grounds for arrest must be exhaustively stipulated in law. However, the circumstances that give rise to a reasonable doubt are not and can never be exhaustively enumerated in the CPC. The Court does not agree that a reasonable ground can arise in some particular circumstances that may not take place in any other circumstances. The Court observed that "a doubt is not a notion which can be exhaustively defined by the legislator and its formation depends on a number of subjective and objective circumstances in each particular case". The legislator is unable to draft all possible versions and specific scenarios of particular cases in advance. The key point made by the legislator to those competent to apply the law is that they must act in compliance with the Constitution.

The Court elaborated its reasoning by relying on international practice concerning a reasonable doubt. The European Court of Human Rights stated in the case of *Murray v. the United Kingdom* that at the very least, the honesty and *bona fides* of a suspicion constitute indispensable elements of its reasonableness. However, there must be sufficient facts or information providing a plausible and objective basis for a suspicion that the person concerned may have committed the offence.[2] In the case of *Fox, Campbell and Hartley v. the United Kingdom*, the Court held that "that having a 'reasonable suspicion' presupposes the existence of facts or information, which would satisfy an objective observer that the person concerned may have committed the offence. That may be regarded as 'reasonable' will however depend upon all the circumstances."[3] The same approach was developed by the Supreme Court of the United States in the case of *Brinegar*: "Probable cause exists where the facts and circumstances within the officers' knowledge, and of which they have reasonably trustworthy information, are sufficient in themselves to warrant a belief by a man of reasonable caution that a crime is being committed."[4]

The Court did not agree with the claimant that the ground for arrest should itself necessarily give birth to a reasonable doubt. In the Court's view, some grounds of arrest may independently give rise to a reasonable doubt, but it does not exclude the possibility for a reasonable doubt to be originated on the basis of other data as well which precede the ground of arrest. In this reasoning, the Court relied on the observation made by the Constitutional Court in its judgment of 29 January 2003 that "other data may lie in the basis of a doubt but not arrest of a person"

The Criminal Procedure Code of Georgia established a higher standard for arrest than a reasonable doubt concerning commission of a crime by a person. The CPC introduced the grounds for arrest, which, taken jointly and cumulatively with a reasonable doubt, create the reality, when a person can be arrested. The Court held that "fleeing cannot be understood as the change in a person's whereabouts alone. Absconding, as the claimant agrees as well, implies a future risk that the person concerned will flee from the investigation and the court. Absconding presupposes a risk that a

[2] Murray v. the United Kingdom, para. 61.

[3] Fox, Campbell and Hartley, para. 32.

[4] U.S. Supreme Court. Brinegar v. United States, 338 U.S. 160 (1949), Pp. 338 U. S. 175-176.

person concerned will continue his/her criminal activity, will commit another crime at least with the view of ensuring not to be handed over to law-enforcement bodies, and,if possible, will destroy evidence . Eventually, absconding will make it extremely difficult, if not impossible, to administer justice with the person concerned."

Stemming from all the abovementioned, the Court was satisfied that the impugned provision was in compliance with the clarity and proportionality principles; that the limitation it introduced was indispensable to attain a legitimate aim i.e. administration of justice and did not burden a person unnecessarily. Accordingly, the Second Board of the Constitutional Court did not uphold the constitutional claim and declared the impugned Article 142.1.f of the CPC as constitutional.

Prof. Gamkrelidze expressed critical opinions concerning the abovementioned decision of the Constitutional Court. He believes that law should exhaustively provide for all the grounds giving rise to "a reasonable doubt". If the legislator fails to do so, then law should be completed in the future. Otherwise, members of law-enforcement bodies can act arbitrarily when effecting arrests. In the opinion of prof. Gamkrelidze, the ground for arrest introduced by the impugned provision that "a person may flee" should independently raise a doubt on the commission of the crime by that person as in case of another ground, e.g., the incrimination of a person by a victim or an eyewitness. According to prof. Gamkrelidze, where the ground for arrest does not give rise to a reasonable doubt, the arrest effected on such ground is unconstitutional.

We find it difficult to agree with the above arguments of prof. Gamkrelidze. The factors giving rise to a reasonable doubt are not those legal circumstances which can be exhaustively enumerated in law. This or another circumstance can validly influence the formation of a reasonable doubt in one case and be altogether inapplicable in another instance. As there is not much jurisprudence of the Courts of Georgia on the interpretation of the standard of a reasonable doubt during arrest, here is an excerpt from the decision of the US Supreme Court on the case of *Brinegar v. the US*. The Court stated:

"In dealing with probable cause, however, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. The standard of proof is accordingly correlative to what must be proved. The substance of all the definitions" of probable cause "is a reasonable ground for belief of guilt.... And this "means less than evidence which would justify condemnation" or conviction… it has come to mean more than bare suspicion: probable cause exists where "the facts and circumstances within their [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that" an offense has been or is being committed... These long-prevailing standards seek to safeguard citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime. They also seek to give fair leeway for enforcing the law in the community's protection. Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions

of probability. The rule of probable cause is a practical, nontechnical conception affording the best compromise that has been found for accommodating these often opposing interests."[5]

The same approach has been developed by the Constitutional Court of Georgia in its jurisprudence. "Other data can lie in the ground for a suspicion"- The Constitutional Court proved with this approach that the data which can lie in the ground of a doubt may not be exhaustive. This approach was reiterated by the Second Board of the Constitutional Court in its judgment of 6 April 2009.

Here is an illustrative example: A murder is committed and the letter Y is imprinted on the victim's forehead. An investigator finds out that X lives in the same flat where the victim was found. X has been recently released from a prison where he served sentence for murdering a man and imprinting Y on the victim's forehead. Moreover, the investigator learns that X had had a fight with the victim and threatened to kill him. It is possible in such a case that the investigator has a reasonable doubt that the murder has been committed by X. According to the considerations of Prof. Gamkrelidze, the investigator cannot have such a reasonable doubt in the above case as the circumstances, which lie in the ground of the doubt (X was sentenced for a similar crime previously, he was in a conflict with the victim and threatened to kill him) are not provided for in any grounds for arrest stipulated in Article 142 of the CPC. In the above case, the investigator can naturally form a reasonable doubt that the murder has been committed by X. Any neutral observer would have the same doubt, although the CPC does not describe such a case and it is impossible to regulate particular situations of the kind in the Code.

Article 18.3 of the Constitution of Georgia does not oblige the legislator to define those specific circumstances where a person can be suspected of having committed a crime. The Constitution obliges the legislator to define by law in which cases such a person can be arrested and, accordingly, restricted in his/her freedom.

The substantiality of circumstances, which lie in the basis of forming a reasonable doubt, in which a law-enforcement officer is authorised to effect arrest, must be checked in each particular case. This is the competence of a court reviewing the reasonableness and lawfulness of arrest. If a court is satisfied that the circumstances based on which a person was arrested are unreasonable, the deprivation of liberty will be considered unsubstantiated. This excludes any room for an arbitrary action on the part of law-enforcement agencies.

The legislator is extremely restricted by the Constitution in setting the grounds for arrest. The legislator is obliged to define such grounds exhaustively and prove that these grounds are necessary for the fulfilment of the purpose of arrest. By virtue of introduction of the grounds for arrest, the legislator sets up one more obstacle in the way of deprivation of individual liberty and provides for the exhaustive list of cases where it is absolutely necessary to effect arrest.

It is evident from the above scenario that the investigator could form a reasonable doubt as to X's involvement in the crime but he/she cannot effect arrest unless there is a relevant ground

[5] U.S. Supreme Court. Brinegar v. United States, 338 U.S. 160 (1949), Page 338 U. S. 175-176.

under Article 142 of the CPC. The impugned provision sets the wording "a person may flee" as such a ground. It is clear that if a suspect flees, the aim of arrest (averting destroying of evidence, commission of a new crime *etc.*) cannot be attained. A court of general jurisdiction is authorised to review the actual risk that one would abscond and those competent to order arrest are obliged to prove the existence of such a risk. Otherwise, a court will consider such an arrest as unsubstantiated. Thus, once again, the impugned provision leaves no room for arbitrary action on the part of law-enforcement bodies. The Constitutional Court evaluates the normative contents of the provision and the degree of arbitrariness it allows.

It is evident from the above discussion that the legislator does not leave any room for arbitrariness, either through the impugned provision or the Criminal Procedure Code in general. The message sent by the legislator to law-enforcement bodies is constitutional and the Constitutional Court is not in a position to presume that the abovementioned will be understood differently by those authorised to effect arrest or the Courts of General Jurisdiction.

I find it difficult to agree with the opinion that the grounds for arrest must necessarily form a "reasonable doubt" independently and, apart from the impugned provision, all other grounds provided for in Article 142 of the CPC necessarily, and by all means, give rise to such a doubt.

It was not the legislator's aim to determine the standards of forming a reasonable doubt and particular cases thereof. As mentioned above, such a determination is unfeasible. The circumstances that give rise to a reasonable doubt may precede the emergence of the grounds for arrest or the ground for arrest itself could be one of such circumstances or both of these can be the case at the same time.

It should be decided, in each particular case, to what extent a self-standing ground for arrest can be the ground for forming a reasonable doubt, e.g., a ground such as the incrimination of a person by a victim. From the first view, the aforementioned by all means gives rise to a reasonable doubt on the commission of a crime by a particular person. It may not always be the case. E.g. a victim incriminates X in the commission of a crime. An investigator makes an inquest and finds out that X was not in the country at the time of the commission of the crime; or a robbery has been committed and the victim incriminates someone without limbs. In such cases, the investigator formally has the ground for arrest (incrimination by the victim) but having juxtaposed the circumstances, he/she cannot have a reasonable ground. If the officer proceeds with arrest in such a case, it will be arbitrary despite the fact that there is a legal ground. In the other scenario and under different circumstances, incrimination by a victim may raise a reasonable doubt. The same can be said with respect to the ground for arrest provided by the impugned provision. In a certain situation, the precondition provided for by the impugned provision, in combination with other circumstances or independently, may give rise to a reasonable doubt. The grounds for arrest, either provided in the impugned provision or in other provisions, cannot be expected to form a reasonable doubt in any case as those grounds are not aimed at defining those particular situations where such suspicions arise.

Several aspects can be highlighted in the Constitutional Court's judgment that are significant in terms of the development of constitutional justice in Georgia: the interpretation of the right to

liberty as guaranteed by Article 18 of the Constitution of Georgia; the determination of "reasonable doubt" standards to be applied during an arrest, which is of utmost theoretical and practical importance; the shaping of Constitutional Court's approach as to when a recent provision can be considered substantively analogous to the one previously held unconstitutional. On one hand ,the Court's judgment enables efficient fight with criminality to go on unhindered and, on the other hand, ensures the respect for human rights and protects against arbitrary and unsubstantiated arrest of a person.