

**Constitutional Court of Georgia
Judgment**

N2/3/441

Batumi, 18 June 2008

Composition of the Panel:

Besik Loladze - Chairman of the Meeting

Otar Sichinava - Member, Reporter Judge

Lali Papiashvili - Member

Secretary of the session: Darejan Chalagava

Title of the Case: Framework Convention on Tobacco Control Implementation and Monitoring Center against the Parliament of Georgia

Subject to the dispute: Article 4, paragraph 2 of the Law of Georgia on Tobacco Control in Georgia, subparagraph "a" and "b" of paragraph 3 of article 5, subparagraph "b" of paragraph 1 of article 6, Article 8 of the Georgian Law of Georgia (Section of Advertising of Tobacco Products) and Article 208 of the Code of Administrative Offenses of Georgia (Section 15, 155 (6) and 171 (1) -171 (3) Articles of Conformity with Articles 15 and 37 of the Constitution of Georgia

Participants of the case: Director of the Framework Convention on Tobacco Control Implementation and Monitoring Center in Georgia George Bakhturidze and the representative of the plaintiff Andro Bzhalava

I

- 1. The Framework Convention on Tobacco Control Implementation and Monitoring Center in Georgia has brought a constitutional claim registered under Article 441 to the Constitutional Court of Georgia on 16 November 2007. On the 22nd of November, 2007, the Constitutional Court of Georgia handed over the second board to solve the constitutional claim for substantial review.**
- 2. In the Constitutional Court, a constitutional claim indicates subparagraph "f" of paragraph 1 of article 89 of the Constitution of Georgia and subparagraph "e" of paragraph 1 of article 19 of the Organic Law of Georgia on Constitutional Court of Georgia, Article 39 "Sub-paragraph" of the Constitutional Court of Georgia " Oni first paragraph 2 of Article 15 and the first paragraph.**

3. In the constitutional claim the applicant requests the subparagraph "b" of paragraph 2 of Article 4 of the Law of Georgia on Tobacco Control, subparagraphs "a" and "b" of paragraph 3 of article 5 and subparagraph "b" , Article 8 of the Law of Georgia on Advertising, part of the advertisement related to tobacco products and administrative violation of Georgia Section 208 of the ATA Code, with Articles 155(3)-155(6) and 171(1)-171(3), is unconstitutional based on the noncompliance with Articles 15 and 37 of the Constitution of Georgia.
4. In the opinion of the claimant, the existence of an incomplete legislative framework in connection with the control of tobacco products in Georgia violates the rights protected by the Constitution of life and health in a healthy environment. This leads to the increase of deaths due to the number of smokers and tobacco consumption. The goal of the Framework Convention on Tobacco Control Implementation and Monitoring Center in Georgia is to monitor the implementation of the Framework Convention on Tobacco Control. The fact that Georgian legislation does not comply with the requirements of the Framework Convention on Tobacco Control and other international agreements, prevents the applicant organization to carry out its objectives in full and thus violate its rights.
5. The article 4 of Article 4 of the Law of Georgia on Tobacco Control states a list of facilities where smoking is prohibited. The paragraph 2 of this article obliges the heads of the same facilities to issue a special place for tobacco smokers. In the opinion of the claimant, allocation of special places for tobacco smoking in institutions where tobacco smoking is prohibited is substantially different from the requirement set forth in Article 4 § 1, contradicting it and therefore unconstitutional. Unconstitutionality of the impugned norm indicates that Article 4 § 2 does not correspond to Article 8 of the Framework Convention on Tobacco Control of 21 May 2003.
6. In accordance with paragraph 3 of Article 5 of the Law of Georgia on Tobacco Control in Georgia, it is prohibited to organize and conduct medical and training activities by a person carrying out tobacco industry if it is accompanied by: a) Demonstration of a trademark of the Tobacco Production or Tobacco Production Firm; B) Demonstration of logotype. ~. The applicant believes that these norms contradict the provisions of Article 13, paragraphs 1 and 2 of the Framework Convention Tobacco Control. In accordance with the Convention, the Parties undertake to ensure a comprehensive ban on popularity and sponsorship of tobacco.
7. Subparagraph "b" of Article 6 of the Law of Georgia on Tobacco Control in Georgia, in the opinion of the applicant, contradicts Article 11 of the Framework Convention on Tobacco Control. The disputable norm states that medical warnings should take only 5% of the previous tobacco products, while Article 11 of the Convention states that this warning should take over 50% and more of the main demo area of the box.

8. According to Article 45 of the Constitution of Georgia, the basic rights and freedoms referred to in the Constitution are subject to legal entities, subject to their content. The plaintiff as a legal entity is a legal structure, a fictitious, which, as already mentioned, can not be subject to the nature of the right to life in a healthy environment. Thus, these rights do not fall within the limits of the rights that may apply to legal entities, taking into account their content.

9. The fact that the applicant intended to Georgia to monitor the implementation of the Framework Convention on Tobacco Control and this way of life and health for the provision of a secure environment, the practice of the Constitutional Court, the Constitutional Court did not give rise to a right to apply to the circumstances when the plaintiff violation or possible violation of the right to not be confirmed. The Constitutional Court of Georgia noted that the Public Defender of Georgia (so called abstract control) is entitled to appeal with constitutional claim to protect the interests of other persons by subparagraph "b" of Article 39 of the Organic Law of Georgia on the Constitutional Court of Georgia. Consequently, the claimant's statement that there is no grounds for the right to appeal to the Constitutional Court of Georgia gives the plaintiff its statute, specifics and activity.

10. As noted, the applicant in the constitutional claim indicates the incompatibility of the disputed norms with other legislative norms as well as the international agreement. The Constitutional Court considers that considering these issues within the scope of Article 89 § 1 of the Constitution of Georgia is impossible and beyond its competence. The Constitutional Court of Georgia has indicated that this provision of the Constitution of Georgia is a special norm and does not provide for determination of compliance with the international agreements of normative acts. The only act under which the Constitutional Court examines the constitutionality of the norm is the Constitution of Georgia and the Constitutional Court's task is to define the constitution and not the international treaties and agreements. (Decision # 2 / 2-389, II, 5)

11. The Competence of the Constitutional Court of Georgia also exceeds the discussion on the requirement for the immediate implementation of the Implementation of the Framework Convention on Tobacco Control for the Parliament.

12. Finally, we can make a conclusion that no # 441 constitutional claim should be taken to consider substantially on the basis of sub-paragraphs "a", "b" and "c" of Article 18 of the Law of Georgia on Constitutional Litigation.

III

Based on the above mentioned, Article 21 (2) of the Organic Law of Georgia on the Constitutional Court of Georgia, paragraph 2 of article 31, subparagraph "a" of article

39, paragraphs 5 and 5 of article 43 -8 of the subparagraph "e" of paragraph 1 of Article 16 of the Law of Georgia on Constitutional Legal Proceedings and subparagraph "a", "b" and "c" of article 18 e-mail address

The Constitutional Court of Georgia establishes:

1. Constitutional claim # 441 (Framework Convention on Tobacco Control Implementation and Monitoring Center in Georgia) against the Parliament of Georgia shall not be taken for consideration.
2. The ruling is final and is not subject to appeal or revision.
3. A copy of the ruling shall be sent to the parties.

Members of the Panel

Besik Loladze

Otar Sichinava

Lali Papiashvili