Transfer of state forest ownership to church is discriminatory and contradicts with the Constitutional Court practice

On May 22, 2020, the Parliament of Georgia upheld the adoption of the Forest Code of Georgia, the purpose of which is to establish legal grounds for sustainable forest management, that should ensure the protection of Georgian Forest biodiversity, maintenance and development of quantitative and qualitative characteristics of forest features and resources to execute its ecological, social and economic functions.[1] To achieve this goal, key principles and legal mechanisms of forest management have been defined in the Forest Code of Georgia and mechanism for its execution has also been established.

According to the Forest Code of Georgia, the Georgian Forest is recognized as “natural resource of special value to the country” and the purpose of the Code is “targeted and rational consumption of forest resources and another natural potential.”[2] According to the principles of sustainable forest management, “while making a decision on

forest management, the interests of the local population should be taken into account based on sustainable forest management. For the common use of forest accessibility to the forest must be ensured for everyone."[3]

Within the framework of the reform, under Law of Georgia "on State Property", the addition of state forest to the list of state property, that is not subject to privatization, [4] has been defined as one of the most important guarantees for sustainable forest management, which responds to the principle of state forest management for public interests. However, under the same law special case has been established, where "based on the relevant application, with the mediation of the Ministry of Environmental Protection and Agriculture of Georgia, the Apostolic Autocephalous Orthodox Church of Georgia to be given ownership of areas of forests adjacent to Orthodox churches and monasteries, available before the enactment of this law-in each case no more than 20 hectares, as well as territories assigned under the Forest Code of Georgia." [5] This norm shall enter into force on January 1, 2021.

We believe that the special case established regarding the transfer of the state forest contradicts with the purpose defined under the Forest Code of Georgia and the key principles of forest management, as it fails to ensure, on one hand, rational use of forest resources and on the other hand, protection interests of the society, especially local population with regard to equal accessibility of the forest. Given the fact that transfer of the state forest takes place not for the common public interests, but to satisfy the private interests of a particular religious union, it makes no sense to recognize the state forest as a natural recourse of special value to the country under the same code.

In addition, we believe that the possibility of transferring state forest to the Apostolic Autocephalous Orthodox Church of Georgia is discriminatory towards other religious unions, as granting additional financial and property guarantees to the Orthodox Church puts other religious unions in an unequal position.

It should also be noted that under the judgment of the Constitutional Court of Georgia, of July 3 2018, ***the norm of the Law of Georgia on "State Property", which only allowed the Orthodox Church to receive state property free of charge, was declared unconstitutional.***[6] According to the decision of the Constitutional Court, "differentiation, defined by the appealed provision is not a requirement of the

Constitution of Georgia and it does not follow from the provision of Article 9 of the Constitution on the outstanding role of the Orthodox Church in the history of Georgia. The impugned norm has no rational connection with the legitimate purpose (realization of the Constitutional principle of relationship between the state and the church) named by the defendant, it establishes different treatment on religious grounds, which does not have sufficient, objective and reasonable justification."[7] ***We believe that the existing special case contradicts with the standards of equality established by the Constitution of Georgia and it is the overruling norm of the above-mentioned judgment of the Constitutional Court. (8)***

[1] The Forest Code of Georgia, preamble.

[2] The Forest Code of Georgia, preamble.

[3] The Forest Code of Georgia, Subparagraph "c" of Paragraph 1 of Article 4.

[4] Subparagraph "e" of Paragraph 1 of Article 4 of Law of Georgia on State Property.

[5] Paragraph 6 of Article 3 of Law of Georgia on State Property.

[6] The judgment of the Constitutional Court of Georgia of July 3, 2018 on the case "LEPL "Evangelical-Baptist Church of Georgia", LEPL "Evangelical-Lutheran Church in Georgia", LEPL "Supreme Religious Administration of Muslims of all Georgia", LEPL "The Redeemed Christian Church of God in Georgia" and LEPL "Evangelical Faith Church of Georgia" v. the Parliament of Georgia." Available at: https://constcourt.ge/ka/judicial-acts?legal=1178

[7] Ibid., paragraph 28.

(8) The overruling norm is a norm, which can be declared invalid by the Constitutional Court in a simplified manner, at the preliminary hearing.