Conference of European Constitutional Courts
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The relations between the Constitutional Courts and the other national courts, including the interference in this area of the action of the European courts

Report of
the Constitutional Court
of Georgia

I. The Constitutional Court, other courts and constitutional control

A. Judicial system of the state

1. Judicial system

1. The report gives the presentation of judicial system of Georgia on the basis of analysis of the Constitution of Georgia of 1995, the Organic Law "On the Courts of General Jurisdiction of Georgia", the Organic Law "On the Supreme Court of Georgia" and the legislation on the Constitutional Court of Georgia.

The judicial power in Georgia is exercised by virtue of constitutional control, administration of justice and other forms established by law.

A judicial body of constitutional control is the Constitutional Court of Georgia, whilst justice is administered by the courts of general jurisdiction.

The courts of general jurisdiction in Georgia are:
District (City) Court,
Regional Court,
The High Courts of the Autonomous Republics of Abkhazia and Adjaria,
The Supreme Court of Georgia.

The system of the courts of general jurisdiction of Georgia is unified.
Formation of emergency or special courts is inadmissible.
Martial Courts can be formed during the state of war, only within the system of the courts of general jurisdiction.

Jurisdiction of the Courts:

According to the procedure prescribed by the civil procedural legislation of Georgia the courts of general jurisdiction consider the cases regarding the violated or contested rights, as well as protection of the legal interests, namely:
a) Disputes regarding the civil, family, labor and land relations, the use of natural resources and protection of environment, these relations between citizens, citizens and juridical persons as well as between juridical persons;
b) Cases arising from state, administrative, tax and other relations;
c) Cases on unlawfulness of the decisions passed by state officials, state bodies, bodies of local government and self-government allegedly infringing human rights and fundamental freedoms if their protection is not provided by other means according to law;
d) Cases on citizens' refusal on lawfulness of the normative acts, except for the normative acts which constitutionality is controlled by the Constitutional Court;
e) Disputes between social and religious organizations (entities) with state bodies and officials, disputes between these organizations.
f) Cases on establishment of facts and status;

g) Cases stemming from international treaties, as well as cases with participation of foreign nationals, stateless persons, companies and organizations.

The above cases are considered by the courts of general jurisdiction if it is not within the competence of other bodies according to law.

The cases within the jurisdiction of the courts are considered by the District (City) Courts, unless they are not within the line of the Regional Court.

As a court of appeal the Regional Court considers appeals on decisions of District (City) Courts and as a first instance court considers cases according the procedure established by procedural code, as well as renders decisions on other issues provided for by the Criminal Procedural Code.

The High Courts of Abkhazia and Adjara, Tbilisi and Kutaisi Regional Courts act as a first instance court on:
Disputes where price of the claim exceeds 500 000 GEL;
Disputes on intellectual property;

The Regional Court considers the above cases acting through:
- Board for Civil and Entrepreneurship cases;
- Board for Criminal Cases;
- Board for Administrative and Tax Cases;
- Chamber of Appeal for Civil, Entrepreneurship and Bankruptcy Cases;
- Chamber of Appeal for Criminal Cases;
- Chamber of Appeal for Administrative and Tax Cases.

The Supreme Court acts on the whole territory of Georgia as the highest and the last instance court for administration of justice.
The Supreme Court of Georgia according to the procedure established by procedural law supervises administration of justice in the courts of general jurisdiction as well as acts as a first instance court considering the cases prescribed by law.
There are following boards in the Supreme Court of Georgia:
- Board for Criminal Cases;
- Chamber for Civil,Entrepreneurship and Bankruptcy Cases;
- Chamber for Administrative and other Cases;
- Chamber for Criminal Cases;
- Grand Chamber;
- Plenum.

Being a first instance court the Board for Criminal Cases considers those criminal cases, which fall into the jurisdiction of the Supreme Court.

Being a court of appeal the Chamber of the Supreme Court according to the procedure prescribed by law considers appeals on decisions of the District (City) Courts, the Regional Courts of Georgia, the High Courts of the Autonomous Republics of Abkhazia and Adjara, the Supreme Court of Georgia. It revises sentences and other acts of courts on account of finding new circumstances.

2. The Constitutional Court

According to Article 82 of the Constitution of Georgia the "judicial power is exercised by virtue of constitutional control, administration of justice and other forms established by law."

Stemming from the above-mentioned the Constitutional Court is a part of judicial power, though categorically separated from the system of courts of general jurisdiction. The courts of general jurisdiction administer justice (Article 83.2 of the Constitution) and the Constitutional Court is a body of Constitutional Control, ensuring supremacy of the Constitution of Georgia, constitutional legality, and protection of constitutional rights and freedoms (Article 1 of the Organic Law of Georgia "On the Constitutional Court of Georgia").

It is worth mentioning that against the background of peculiarities of systems of constitutional jurisdiction two major models of constitutional jurisdiction are dominant. According to the first model the cases of constitutional-legal nature fall within the jurisdiction of the courts of general jurisdiction being higher instance courts. Following the second one a special body in the form of the Constitutional Court shall be set up. Georgia followed the second approach. Accordingly the present report emphasizes those major peculiarities, which in our opinion ensure effectiveness of constitutional control under the conditions of functioning of a specially set up body:

a) The principal advantage of special constitutional jurisdiction is the rationality of examination of the circumstances of the case and reaching the decisions. The Constitutional Court's activities are confined to consideration of constitutional-legal issues and are free from deciding the criminal and civil law cases; It is exclusively concentrated on the constitutional-legal problematic.

b) At the same time the Constitutional Court is not obliged to consider only those cases having arisen during the ordinary legal proceedings of consideration of a case that originally did not have the constitutional-legal ground.

c) It should also be admitted that the existence of special constitutional justice does not deprive other courts the right to control activities of state bodies in terms of constitutionality. For instance, when the courts examine lawfulness of administrative acts, it is done in terms of constitutionality at the same time. Institution of the constitutional proceedings by a court of general jurisdiction, which questioned constitutionality of a normative act applicable by it during consideration of a case implies that the courts control the constitutionality of legal norms as well, though they are not authorized to find the law unconstitutional.

Importance of the Constitutional Court of Georgia as a new institution, set up by the Constitution of 1995, its efficiency and the role in the country should be mentioned. Naturally the existence of constitutional control in a state is a means that affords and is bound to afford real protection to an individual from the arbitrariness of the authorities. The aforementioned is achieved by virtue of guaranteeing the supremacy of the Constitution, legality and law in general.

However, it should be admitted that the mere fact of the existence of a body of constitutional control does not automatically imply the solution of the problem of an individual's protection from the authorities. The main thing is to achieve the efficiency of the Constitutional Court so that it could properly discharge its mission and thus justify the necessity of adoption and existence of such an institution.

First and foremost the Constitutional Court, stemming from its mission, should be mighty, sound, competent, prestigious and authoritative institution vested with the confidence of the population. In order to achieve the aforementioned the Constitutional Court has in the first place to be independent both personally and institutionally.

Independence involves many aspects, it implies administration of constitutional control in pursuance with law, independently from anybody, avoidance of any outer pressure, restriction of all kinds of activities jeopardizing independence of the Constitutional Court and other factors.

It is worth mentioning that the guarantees of independence of the Constitutional Court of Georgia are provided for by the legislation on the Constitutional Court.

Here are some excerptions: "The Constitutional Court discharges its functions … based on the principles of independence and immunity of the members of the Court" (Article 2 of the Organic Law).

A member of the Constitutional Court shall be independent in discharge of his/her duties. Interference in his/her activities shall be impermissible and punishable by law.

"The estimate of the Constitutional Court is provided for by special Article of the state budget".

"With the view of ensuring independence of a member of the Constitutional Court the state is obliged to create all appropriate working and living conditions." (Article 4, §§ 1-3).

Separate Article refers to the guarantees of immunity of a member of the Constitutional Court (Article 15) and a separate law provides for the guarantees of social protection.

The efficiency of the Constitutional Court is guaranteed by legal and democratic aura generally existed in the country, that factually means country's ability to follow the rule of law, ability and readiness of each individual to live in a civil society and before that an individual's ability to establish such a society. Likewise the Constitutional Court's efficiency is ensured by existence of appropriate level of political culture, legal awareness of society - citizens and authorities. The aforementioned implies on the one hand the ability of public authorities to decide on the right political direction and governing the country in a democratic regime relying on the Constitution and on the other hand the ability of individuals or various organizations to know their rights and the ways of its protection. In our opinion both are more or less solved in the country.

Despite the legal nihilism still prevailing in Georgian society existence of the Constitutional Court and frequent application to it in terms of the protection of the Constitution (in the course of five years up to 170 constitutional claims and more than thousand appeals and applications have been lodged with the Constitutional Court) indicates that political and legal awareness of the population has become higher.

The Constitutional Court, being set up with the view of protecting an individual from the arbitrariness of state authorities shall be neutral with regard to all three branches of power and

necessarily apolitical. The latter is ensured through the principle of its recruitment. The Constitutional Court is created by the representatives of all three branches of the power. In addition, according to the Organic Law on the Constitutional Court (Article 11.4) the representatives of the President, Parliament and Supreme Court shall be equally presented in two boards. This will exclude any likelihood as to bias and partiality to any branches of power.

The entire activity of the Constitutional Court aims to ensurance of the supremacy of the Constitution and constitutional legitimacy and accordingly unconditional protection of the rights of an individual being the cornerstone value of the society. The Constitutional Court falls into the category of a group of bodies of constitutional control, which exercises the supreme power in the field. It is vested with the effective means of control in almost every sphere of public life. We do not aim to discuss the competence of the Constitutional Court in detail, just the major aspects of its activities are underlined below. The Constitutional Court of Georgia within its competence establishes compatibility of laws and other normative acts with the Constitution, which is ultimately an indispensable precondition for protection of an individual from arbitrariness on the part of state authorities. It is worth mentioning that since 1996 the Court has considered up to 130 cases, and some 40 await examination most of them related to the protection of property rights.

The Constitutional Court's role in exercise of such forms of popular sovereignty as elections and referendum is of paramount importance. The Constitutional Court is entitled to consider dispute on constitutionality of elections and referendum, recognition of a term of office of a member of the Parliament of Georgia, or pre-term termination of office, which is a best means for assessment and examination of the quality of transparency and legitimacy of elections. And the real administration of constitutional control in this sphere is a significant indicator of the level of democracy in the country.

Efficiency of the Constitutional Court is also preconditioned by its more or less perfected legal proceedings, which has to serve as a guarantee of the Court's functioning as acting, live, active and ever actual institution. At the same time the Court's five years judicial practice revealed the necessity for amendment of the legislation on the Constitutional Court and at present the appropriate steps are being taken in this regard.

B. Jurisdiction of the Constitutional Court, and the sphere of constitutional control of other courts

1. Control on a law and other acts

§ 1. Types of control

3. On the basis of a constitutional claim or a constitutional submission the Constitutional Court of Georgia is entitled to consider and decide about compatibility of the laws of Georgia, the rules of the Parliament of Georgia, the normative acts of the President of Georgia, Abkhazian and Adjarian supreme state bodies with the Constitution of Georgia; constitutionality of international treaties. The Constitutional Court also considers constitutionality of any normative act allegedly infringing the rights and freedoms defined in

chapter two of the Constitution. Certainly competence of the Constitutional Court is not confined to the aforementioned. On competence in details *vide infra.*

4. The Constitutional Court is the only institution vested with an exclusive authority to establish constitutionality of normative acts.

It is also worth mentioning that the cases on lawfulness of the actions and decisions of state bodies, bodies of local government and self-government infringing human rights and fundamental freedoms are considered by the courts of general jurisdiction if their protection is not otherwise provided according to law.

Likewise the cases regarding citizens' claims on lawfulness of administrative acts, are considered by the courts of general jurisdiction except for those normative acts consideration of which falls within the competence of the Constitutional Court.

Thus the courts of general jurisdiction may assess lawfulness as well as raise the question on constitutionality of a normative act, though they are not entitled to take decision on its compatibility with the Constitution.

5. Unlike other countries (France, Sweden, Finland etc.) administering preventive control – examination of constitutionality of an act before its promulgation - the Constitutional Court of Georgia is not authorized to administer it. It exercises posterior control. Only exception from the above-mentioned is establishment of constitutionality of international treaties and agreements (or their particular provisions). According to Article 38.2 of the Organic Law of Georgia "On the Constitutional Court of Georgia" "Lodging a constitutional claim on compatibility with the Constitution of such an international treaty, agreement or their particular provisions, which is subject to ratification is possible before their ratification."

In the course of drafting the normative basis on the Constitutional Court and afterwards the question on charging the Court with the function of preventive control was numerously raised. Bellow is given pro and contra in a nutshell to such a standpoint.

The major advantage of the preventive control is that that it affords the possibility to determine legal regulation of contested constitutional-legal issues at the earliest stage, before a draft enters into force. Besides as a rule there are short time limits set for institution of proceedings and rendering a decision. Stemming from the aforementioned preventive control promotes stability of legislation. Also preventive control is a kind of precondition for maintaining the authority of legislation.

The shortcomings of preventive control should also be mentioned. The complication and complexity of modern legislation considerably complicates establishment of constitutionality of a law before there have not been any data in terms of interpretation of the norms and practice of their application by various bodies. Moreover it may often happen that the socio-economic situation that preconditioned adoption of a law may change to such an extent that under new conditions certain provisions of the law may be found in breach of the gist of the Constitution. In this context preventive control is considered to be unstable and constitutionality of an act earlier found constitutional may be questioned under new conditions. Besides constitutionality of legislative norms should be examined after certain time since political debates in a legislative body has elapsed given rendering a right decision by the court needs in the first place considerable time. And preventive control as a rule

hinders the legislative process, accordingly the decision has to be made expeditiously lest legislative activities should be paralyzed.

Finally, as already mentioned it was decided to charge the Constitutional Court of Georgia with the function of posterior control. One more argument pro this standpoint was the number of claims. Given the Constitutional Court had to deal with all the normative acts it would have artificially overcharged the newly established institution. Generally, the competence of the Constitutional Court of Georgia is not that ample. In our opinion, in those countries where this institution is a novelty and moreover if implementation of such novelty is an attempt to move from the totalitarian regime towards establishment of the rule of law principles it should not be vested with ample competence as it can cause certain dissonance in a not completely shaped society being still vulnerable to every novelty even because of that simple reason that it may be possible (and there is a great likelihood) the society and the state itself having new challenges were not ready for acceptance and assimilation of such an institution. Accordingly because of various possible reasons under the conditions of impossibility of correct and complete discharge of Court's functions the Court may fail to justify its existence and become a superfluous establishment. That is why it is advisable the Constitutional Court launched its activities with its minimal competence, exercise of which in reality is irrevocably necessary and mandatory for the benefit of the society, the population. Meanwhile it would enhance the authority of the Constitutional Court within the state apparatus. The organ having gained confidence and authority in the population can be given a try on a broader scale for the same benefit of people and country.

6. According to the form constitutional control can be abstract or concrete. If concrete control is always related to the concrete circumstances, arising as a result of normative act's application the abstract control is not characterized with such features.

The constitutional control of Georgia only administers concrete control.

§ 2. Application to the Constitutional Court

a. The types of application

7. Only ground for institution of proceedings in the Constitutional Court is either a constitutional claim or a constitutional submission.

On the basis of a constitutional claim the Constitutional Court is entitled to consider and decide about:
a) Compatibility of the laws of Georgia, the rules of the Parliament of Georgia, the normative acts of the President of Georgia, Abkhazian and Adjarian supreme state bodies with the Constitution of Georgia;
b) Dispute on competence between the state bodies;
c) Constitutionality of formation of political entities of citizens and their activities;
d) Dispute on constitutionality of referendum or elections;
e) Constitutionality of normative acts adopted in terms of the issues of the second chapter of the Constitution of Georgia;
f) Constitutionality of international treaties or agreements;

g) Recognition of a term of office of a member of the Parliament of Georgia, or pre-term termination of office;

On the basis of a constitutional submission the Constitutional Court is entitled to consider and decide about:
a) Violation of the Constitution of Georgia by the President of Georgia, the President of the Supreme Court of Georgia, the members of the Government (ministers), the Prosecutor General, the Chairman of the Chamber of Control and members of the Council of the National Bank.
b) If while considering a specific case by a court of general jurisdiction the court concludes that there is a reasonable ground to consider a law or other normative act applicable by the court completely or partially incompatible with the Constitution, it suspends consideration of the case and applies to the Constitutional Court.

b. The claims for annulment

8. The Georgian legislation on the Constitutional Court provides for a possibility to directly apply to the Court with the request of declaring a law or other normative act unconstitutional and its annulment. *Vide infra* who can apply to the Constitutional Court.

The President of Georgia, and not less than one fifth of members of the Parliament of Georgia are entitled to lodge a constitutional claim with the Constitutional Court on compatibility of Laws of Georgia, the Rules of the Parliament of Georgia, normative acts of the President of Georgia, Supreme state bodies of Abkhazia and Adjara also normative acts adopted before enforcement of the Constitution of Georgia of 1995 by competent bodies with the Constitution of Georgia.

Also those entitled to lodge a constitutional claim regarding constitutionality of normative acts or their provisions are the Public Defender of Georgia, individuals of Georgia and other states, if they consider that the rights and freedoms defined in chapter two of the Constitution are violated, A court of general jurisdiction is entitled to lodge a constitutional submission with the Constitutional Court if during consideration of a case the former comes to the conclusion that the norm applicable contradicts the Constitution.

The President of Georgia, not less then one fifth of MPs are entitled to lodge a constitutional claim regarding constitutionality of international treaties and agreements or their particular provisions.

Regarding the scope of the competence between state bodies a constitutional claim can be lodged by the President of Georgia if he/she considers his/her competence or the scope of competence of state bodies to be violated; Likewise by not less than one fifth of MPs of Georgia if they consider the scope of constitutional competence of the Parliament of Georgia or other state bodies to be violated.

The President of Georgia, not less than one fifth of MPs and the supreme state bodies of Abkhazia and Adjara have the right to lodge a constitutional claim on constitutionality of formation of political entities of citizens and regarding their activities.

There are only two cases when the time limits are set:
a) A constitutional claim on constitutionality of international treaties or agreements on conformity of existing international treaties agreements and their separate provision with the constitution may take place only after the refusal by the Georgian parliament of their abolition or denunciation. Also, they will take place after 30 days from their initiation, in front of the parliament, if the parliament of the country will not solve the problems during indicated period of time.
b) The time limit set for lodging a constitutional claim on constitutionality of the Parliament's decision on recognition of a term of office of a member of the Parliament of Georgia, or pre-term termination of his/her office shall not exceed two weeks from the moment of enforcement of the relevant decision of the Parliament of Georgia.

10. The Georgian legislation on constitutional control provides for only case of suspension of a normative act by the Constitutional Court. Namely, if the Constitutional Court finds that operation of the normative act may cause irredeemable effect for either party it is entitled to suspend the act's operation until rendering the final decision.

c. Preliminary questions – declaration of unconstitutionality

Who can lodge applications with the Constitutional Csurt?

11. A court of any instance can lodge a claim with the Constitutional Court in the following case: If while considering a specific case by a court of general jurisdiction the court concludes that there is a reasonable ground to consider a law or other normative act applicable by the court completely or partially incompatible with the Constitution, it suspends consideration of the case and applies to the Constitutional Court.
Recognition of a normative act as unconstitutional does not mean the annulment of the earlier decisions of the court and cause the suspension of enforcement according to the procedure prescribed by law.

12. The courts of general jurisdiction are obliged to apply to the Constitutional Court in the way described in paragraph 11given the courts of general jurisdiction are not entitled to determine constitutionality of a normative act or any other norm.

13. The question is discussed in paragraph 16 and 29.

14. A claimant has the right to waiver that leads to the cessation of the case in the court. The author of the submission for the impeachment has the right to waiver at any stage of the hearing that leads the cessation of the case. The court, which made submission in the Constitutional Court, is not entitled to waive.

15. As already indicated a court of general jurisdiction on their concrete cases for determining the constitutionality of the normative acts make submission to the constitutional courts.

Categorization

16. A so called administrative sitting is held before consideration of the case on merits. At the administrative sitting a question of admissibility of the application is decided.

A constitutional claim or a constitutional submission shall not be admitted for consideration if:

a) Does not meet the requirements provided for in the Law of Georgia "On the Constitutional Legal Proceedings" either with its form or contents. With the view of maintaining the correct form and content of an application according to Article 16 of the aforementioned law it shall be indicated in a constitutional claim or constitutional submission: the name of the Constitutional Court; the name and addresses of the claimant or a submission's author and the respondent; name of a contested normative act and its publishing body, also other requisites of the contested normative act; the proofs which according to the applicant or author of the constitutional presentation consolidate the substantiality of the claim; the provisions of the Georgian Constitution which are not followed by the normative act; the substantiality of the request; the norms of the Constitution which are giving the right to the claimant or the author of the constitutional presentation to apply; the list of the documents on the constitutional claim or constitutional submission and the list and addresses of the people, which according to the claimant or author of the constitutional submission are to appear before the Constitutional Court.
The following should be attached to the constitutional claim or constitutional submission:
The text of a contested normative act;
The ID of the claimant or the author of the constitutional submission;
The bank paper proving the payment of the proceedings fee;
A constitutional claim or a constitutional submission;
All these documents shall be presented in the language of the proceedings.

b) An application is not lodged by an authorized person or a state body;

c) Question of the claim is not in the line of the Constitutional Court;

d) Question indicated in the claim had already been solved by the Constitutional Court;

e) Question indicated in the claim is not defined in the Constitution.

Only because of the lack of the above grounds the Constitutional Court does not admit the application for the consideration on merits.

Likewise at the moment of consideration the annulment of the normative act unconstitutional leads to cease the case in the Court.

There is no other mechanism for reducing the cases in the Constitutional Court, or speeding up consideration. The Court considers the cases following the principle of continuity, the decision on a case by the board or plenum gives the right to proceed to the next one.

The Constitutional Court does not categorize the cases by any criterion. It is possible to unify several claims if the claims refer to the same normative act or its provision and the claimant is the same person. The court considers the cases according to the order of their lodging, for exception of those cases examined by the plenum, dealt as priority.

The jurisdiction of the Constitutional Court:

17. Decision about constitutionality of a normative act provided for in the constitutional submission lodged by a court of general jurisdiction is of utmost importance, given the decision of a court of general jurisdiction having been rendered on the basis of an unconstitutional normative act violates certain constitutional right of a particular person.

The Constitutional Court is obliged to admit a constitutional submission lodged by a court of general jurisdiction, consider it and decide about the constitutionality of the norm provided for in the submission, except for such cases determined by law, when at the administrative sitting the Court refuses to admit the case for consideration on merits. (*vide supra*). It is also worth mentioning that a constitutional submission lodged by a court of general jurisdiction shall be examined by the plenum as a priority.

The Constitutional Court is not entitled to exceed the scopes of the demand of a constitutional submission (or a claim) on its own initiative. According to Article 11 of the Law of Georgia "On the Constitutional Legal Proceedings" the Constitutional Court is not entitled to discuss on compatibility of the entire law or other normative act with the Constitution, if the claimant or the submission's author only demands recognition of a particular norm (provision) of the law or other normative act as unconstitutional.

The claimant is entitled to alter the initial demand's subject and ground, extend (or contract) its volume. In such a case the Court shall discuss on constitutionality of a norm within the scopes of extended demand.

18. When a court of general jurisdiction lodges a submission with the Constitutional Court the former does not furnish all the material being on the case-file given the Constitutional Court is not a higher authority within the system of courts of general jurisdiction. The Constitutional Court as already mentioned is an organ of constitutional control which in the given case is obliged to establish constitutionality of the normative act to be applied by the court of general jurisdiction.

The relation to the issue

20. The Constitutional Court is not entitled to postpone the case indicating that it is not competent to consider the claim lodged with the Constitutional Court, but at the administrative sitting it may merely do not admit the case for consideration on merits.

Elaboration of the issue

21. In case of ambiguity or incorrect formulation of the gist of demand in a constitutional claim or a constitutional submission, the court at the administrative hearing is entitled to ask the claimant to elaborate the essence and scope of the demand, although it is not authorized to edit either its formulation or content on its own initiative.

The clarification of the contested norm

22. While considering a constitutional submission lodged by a court of general jurisdiction the Constitutional Court is obliged to invoke all those evidences adduced in the submission, and which in opinion of the author of the submission confirm its consolidation. The Constitutional Court grounds its decision or conclusion on the evidences having been considered at the sitting of the Constitutional Court.

The normative acts having the paramount legal force

23. Making a change to the contested normative act at the time of its consideration in the Court implies the recognition of the contested norm to be void, which causes the cease of the case at the Court (Article 13 para. 2 of the law of Georgia "On the Constitutional Legal Proceedings").

The parties

23. There are the following participants to the constitutional proceedings:

The parties – individuals and bodies, which according to the law of Georgia "On the Constitutional Legal Proceedings" are considered to be claimants and respondents.

The representatives of the parties i.e. those entrusted by the parties; the defenders of the parties i.e. advocates or those of higher legal education participating in legal proceedings only together with the parties or their representatives.

The issues provided for in the submission of a court of general jurisdiction or in that related to the impeachment, are considered by the Constitutional Court *in absentia* of the parties and their representatives, although while preparing a conclusion on the impeachment the Court is entitled to invite the relevant officials to hear their explanations, not recognizing them as parties.

The participants to the constitutional legal proceedings invited to the administrative sitting by the Constitutional Court are notified of the time and venue of the administrative sitting within 3 days before the sitting.

The participants to the constitutional legal proceedings, witnesses, experts, specialists and interpreters are notified by virtue of the Court communication of the time and venue of the hearing on merits or those of particular legal proceedings within 3 days before the aforementioned hearing or legal proceeding.

The communication shall include:
a) The name and exact address of the court;
b) The venue and the time as to be present:
c) The title of the case to be considered;
d) The name of the person summoned before the court and his/her procedural status;

e) The offer to the summoned persons to adduce all the evidences relevant to the case and being at their disposal;
f) The indication that in case of the absence of the summoned person the receiving person shall hand the communication to him/her at the earliest possibility.
g) The consequences of non-appearance before the court.

Together with the communication the respondent is sent a copy of the claim. The claimant together with the communication is sent written explanation of the respondent if there is such at the Court's disposal.

Georgian individuals or those of other states are due to be personally handed the communication (if the person delivering the communication fails to find him/her at the address known, the communication shall be handed to a full aged family member, or a relevant competent person in such case the recipient of the communication being obliged to put down on the copy of the notification his name, surname and his/her father's name, also his/her relation to the summoned person or the title of his/her post. The recipient of the communication is obliged to hand the communication at the earliest possibility).

In case the communication is necessary to be submitted to an agency, the communication is bound to be handed to a relevant office or an official of the agency.

The time of delivery of the communication to the addressee shall be indicated on the handed communication and on its second copy, which is due to be returned to the Constitutional Court.

The Constitutional Court's department of reception and elaboration of information is in charge of sending the communications and their due record or communicating in other way.

In the case of any party of the process will not presented in the court by legitimate reason the court postpone the hearings of the case.

In case the court is not informed about the reason of the absence of the participant or it considers the absence inexcusable, it can examine the case in absentia.

In case the court comes to the conclusion that participation of a person is necessary it can postpone the hearings of the case.

In case of the absence of both parties the court postpones the hearings if none of the parties informed the court and asked to hear the case in absentia.

The second summon of the participants to the court, and their absence can not be considered as an obstacle for the hearing of the case.

In case of absence of the witnesses, experts, specialist or interpreters the court reaches the conclusion to postpone the case or to hear it. The absence of the named categories for the second time is not an obstacle for the hearing of the case.

24. During the hearings of the case in the Constitutional Court, both parties have the right, at any stage apply to a lawyer or to any other person having legal education, which can

participate in the case only together with the party or its representative. The parties have the right at any stage of the case ask the assistance of their representatives.

There is no public prosecutor in the Constitutional Court, given it is not in the competence of the court to assess anybody's guiltiness.

Articles of the law during consideration of the case

25. When a court of general jurisdiction lodges a submission with the constitutional one, the former stops the hearing of the case before receiving the decision by the Constitutional Court.

Here is remarkable the possibility prescribed by the law of Georgia on " The Constitutional Legal Proceedings". The author of the submission (court) is authorized to waiver at any stage of the case. The written submission shall be lodged with the Constitutional Court.

d. Constitutional application:

The object of the Constitutional Court

26. vide supra.

Lodging the applications

27-28. The Constitutional Court is a part of judicial power, though categorically separated from the system of courts of general jurisdiction. The courts of general jurisdiction administer justice (Article 83.2 of the Constitution) and the Constitutional Court is a body of Constitutional Control

There are two boards consisting from four members and plenum consisting from the nine members in the Constitutional Court. These all three circles are acting on behalf of the Constitutional Court and their decision have equal forces, so it is not possible to appeal the decision of the one board to another or to the plenum.

Selection

29. Vide supra § 16.

The parties

30. Regarding the participants to the proceedings *vide supra* § 23.

The constitutional proceeding is administered based on the principles of equality and adversary before the Constitutional Court and legislation.

Participants to the constitutional legal proceedings have equal rights to get acquainted with the case-file, make excerptions, photocopies, participate in examination of proofs, adduce proofs, question each other, witnesses, experts and specialists, lodge petitions with the Constitutional Court, give oral or written explanations to it, submit their conclusions and express opinions on all the issues raised during Court consideration, rebut the other party's petitions, conclusions and opinions, deliver concluding speeches.

A state body (the Parliament, the President etc.) may participate in consideration of the case, provided it is either a claimant or a respondent to the case. But interference in consideration of the case is not permissible on account of the principle of independence of the court and is punishable under law. According to Article 84 A judge is independent in his activity and is only subject to the Constitution and law. Any pressure upon a judge, or interference in his/her activity with the view of influencing the decision is prohibited and punishable by law.

All acts restricting the independence of a judge is invalid.

The analogous norms are provided for by the legislation on the Constitutional Court

31. *Vide supra*, § 24.

2. Decision of the disputes between the courts

32. It does not fall within the competence of the Constitutional Court to define the scope of competence of other courts. Neither the Constitutional Court nor a court of general jurisdiction has the right to transgress the extents of their authority and interfere in each other's activities.

II. Relations between the Constitutional Court and courts of general jurisdiction

A. Agreed cohesion

33. The Constitutional Court and a court of general jurisdiction are the courts of different functional significance and only act synergetically in the following cases: A court of general jurisdiction of any instance can lodge a constitutional submission with the Constitutional Court If while considering a specific case by a court of general jurisdiction the court concludes that there is a reasonable ground to consider a law or other normative act applicable by the court completely or partially incompatible with the Constitution, it suspends consideration of the case and applies to the Constitutional Court.

Recognition of the law or other normative act as unconstitutional does not imply annulment of judgments and decisions of the court adopted earlier on the basis of this act, it only causes suspension of their enforcement by the procedure prescribed by law.

In such a case the Constitutional Court considers a constitutional submission of a court of general jurisdiction *in absentia* of the author of the submission and the organ the act of which is contested. Though the Constitutional Court while preparing the conclusion is entitled to invite the relevant persons and hear their explanations it does not recognize them as parties.

B. The procedural cohesion

34. The Constitutional Court considers a constitutional submission of a court of general jurisdiction *in absentia* of the author of the submission and the organ the act of which is contested, accordingly so there is no procedural cohesion between the Constitutional Court and either a court of general jurisdiction or the body having passed a contested act.

C. The functional cohesion

§ 1. Control and its consequences

35. Georgia belongs to the Roman-German Law system and not to the Common Law system. Within the former "a law has authority of force and a precedent - the force of authority". A decision of the Constitutional Court is no judge-made law, especially for the courts of general jurisdiction, given they are the have categorically different competence.

But generally, the decision of the Constitutional Court have the mandatory character including for the courts of generally jurisdiction.

According to Article 82.2, "acts of courts are mandatory character on the whole territory of the country for all state bodies and persons."

According to Article 43.8 of the Organic Law "On the Constitutional Court of Georgia" "the decision, verdict and conclusion of the Constitutional Court are final and are not subject to appeal or revision."

36-37. Meeting the constitutional claims on correspondence of laws of Georgia, the Rules of the Parliament, the normative acts of the President of Georgia, of the supreme representative bodies of Abkhazia and Adjara, and likewise the claims on the normative acts adopted regarding the issues defined in the second chapter of the Constitution: meeting the appeals, causes the declaration of the act partially or completely forceless. The same applies to meeting the Constitutional submission made by the general Courts.

During the solving the dispute among the State bodies, the meeting the claim leads to recognition of the act of the legislation as forceless, from the moment of entering into force the decision of the Constitutional Court, only in this case the decision is retrospective.

In the case of abolishment of the legal act, based on which the political entity of the citizens has been created, this union shall be liquidated.

In the case of appeal of the results of election or referendum, it closes the elimination of the possibility to make a referendum, or non-recognition as legal its results.

Meting the claim or submission regarding international treaties and agreements leads to annulment of the international treaty with respect to Georgia, completely or partially.

Meting the claim regarding the term of office of a MP leads to annulment the act of the parliament. The MP has to be restored in his rights from the day of promulgation of the decision of the Constitutional Court, if his rights have been violated.

The Constitutional Court examines the constitutionality of the actions of the President of Georgia, the President of the Parliament, the president of the Supreme Court, Member of the government, the General prosecutor, the President of the controlling chamber, the members of the council of the National Bank and establishes the violation of the constitution by these officials. In this case the conclusion of the Constitutional Court has the character of a recommendation.

38. The legislation of the Constitutional Court defines that the decision of the Constitutional Court is final and not subject to appeal. The legal act, which partially or completely is recognized as non-constitutional, loses legal force from the moment of declaration as non-constitutional by the Constitutional Court. This process is followed by the secretary to the court, which reports per month to the Constitutional Court on enforcement.

§ 2. The Constitutional Court's interpretation

a. The accomplishment of practice of other Courts during discharge of their functions.

39. A conclusion of the Constitutional Court, which is rendered on a general court's constitutional submission - is a type of the decisions of the Constitutional Court, which is vested the same mandatory character for all state organs *inter alia* the Court itself like any decisions rendered by the court.

b. The effect of the interpretation conducted by the Constitutional Court

40. The Constitutional Court of Georgia has no authority to give a norm's (be it constitutional or other norm) interpretation. Although while assessing normative act's correspondence with the Constitution the Constitutional Court is supposed to give a norm's interpretation, which is reflected in its decision.

Vide supra about the decision's mandatory character and its extent.

41. The Constitutional Court declares a specific normative act (or its specific norm) to be constitutional or unconstitutional. In the latter case (declaration of a norm to be unconstitutional) the Court lacks the power to give an appropriate formulation of the contested norm, given it falls within the competence of the legislative body.

42. Under the organic law "On the Constitutional Court of Georgia" if while considering a specific case by a court of general jurisdiction the court concludes that a law or other normative act is completely or partially unconstitutional, it suspends its consideration and

applies to the Constitutional Court. Consideration of the case will be resumed after the decision of the issue by the Constitutional Court.

Declaration of a norm as unconstitutional does not imply annulment of earlier decisions and sentences of the court, but suspends their enforcement according to the procedure prescribed by law.

In case of declaration of a norm as unconstitutional it is deprived of legal force and accordingly a court of general jurisdiction can not rely on it.

III. Interference of the European Courts

A. The Constitutional Court and other courts, the European Convention on Human Rights and the case-law of the of the European Court of the Human Rights.

43. The Constitutional Court of Georgia is not obliged to rely on the judgments of the European Court of the Human Rights, given the place of the Constitution and the rule of incorporation do not create such an obligation. Moreover there is no normative act, which would define the mandatory character of the European Court's judgments.

Although, notwithstanding the above-mentioned the Constitutional Court before the ECHR coming into force with respect to Georgia, and certainly afterwards as well took into consideration the Strasbourg institutions' case-law and still does. The aforementioned stems from both the above-mentioned and from the fact that the Human Rights "catalogue" defined in the second chapter of the Constitution of Georgia mainly coincides with those formulated in the ECHR in terms of civil and political rights.

44. The courts of general jurisdiction while rendering judgments can rely on ECHR provisions, but are not entitled to deviate from the decisions of the Constitutional Court, provided, the latter while rendering the decisions is guided by the supreme law of the country. And the Constitution provides for rather an ample list of Human Rights and Freedoms, which are in full compliance with international law provisions. Besides, according to Article 6 paragraph 2 of the supreme law, the Constitution corresponds with the generally recognized norms and principles of international law and under Article 39 the Constitution does not refuse generally recognized rights and freedoms and guarantees of a citizen and an individual, that are not mentioned in the Constitution, but inherently derive from its principles.

45. The Constitutional Court of Georgia is within the list of the domestic remedies, which according to the ECHR have to be exhausted before applying to the European Court.

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According to the statistics: Since 5 May 1996 up to 7 March 2001 the 161 constitutional claims and submissions have been lodged with the Constitutional Court, 119 among them have been considered the rest 42 have not been considered yet.