



CONSTITUTIONAL COURT OF GEORGIA

Information on Constitutional Justice in Georgia

2018

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1. Introduction

The Constitution of Georgia recognises the human rights and liberties as eternal and supreme values; it sets forth the main directions for legal, economic and social development of the country and creates a legal framework for determining actions of the State organs. The respect for the principle of separation of powers and genuine enforcement of the supremacy of the Constitution serves the basis for proper protection and practical realisation of the rule of law and fundamental human rights.

Under the Constitution, the State has an obligation not to engage in unjustified restriction of human rights and to ensure they are properly exercised. The main function of the Constitutional Court of Georgia, as of the body of constitutional judicial review, is to protect the supremacy of the Constitution, human rights and liberties, as well as to ensure that branches of the government act within the limits prescribed by the Constitution.

The Constitutional Court performs its functions mostly by examining the constitutionality of normative legal acts. A normative act which was declared unconstitutional loses its legal force upon publication of the relevant judgement. Moreover, judgements of the Constitutional Court are binding on every branch of the government. By interpreting and applying constitutional provisions, the Constitutional Court of Georgia determines the main path for the development of the country's legislative system. Judgements of the Constitutional Court are of general application and their effects might apply to each individual in the society. Accordingly, it is of utmost importance to provide each branch of the government and the public with comprehensive information regarding activities of the Constitutional Court and development of its case law.

Under Article 12(2) of the “Organic Law of Georgia on Constitutional Court of Georgia”, the President of the Constitutional Court of Georgia presents information on constitutional justice in Georgia to the President of Georgia, the Parliament of Georgia and the Supreme Court of Georgia on an annual basis. The present document provides a summary of the activities undertaken by the Constitutional Court of Georgia in 2018. In view of the information contained herein, the present document will be important not only to the legislative, executive and judicial branches, but it will also serve practical needs of persons willing to lodge a constitutional complaint before the Court, representatives of mass media, academic circles, non-governmental organisations, students, and other persons interested in the activities of the Constitutional Court.

The present document consists of four chapters. Chapter I provides an overview of the case law of the Constitutional Court of Georgia in 2018. This part of the document includes a detailed overview of the requirements for a reasoned constitutional complaint/referral, as well as the grounds for refusal of their admission for hearing on merits. Chapter I also includes the analysis of all the judgements adopted by the two boards and the plenary session of the Constitutional

Court in 2018, as well as that of the rulings regarding overruling provisions. Chapter II of the document provides information on international activities undertaken by the Court throughout the last year. Chapter III concerns the analysis of major directions with respect to strengthening constitutional justice. Lastly, Chapter IV presents statistical data on registered constitutional complaints, adjudicated cases, adopted judgements and other relevant issues regarding constitutional proceedings.

1. Overview of the Jurisprudence of the Constitutional Court of Georgia

1.1. Court Acts Adopted at the Stage of Preliminary Session

According to the established case law of the Constitutional Court, constitutional complaint/referral is not admitted for consideration on merits if it does not meet formal and substantive requirements prescribed by the legislation, e.g.: it is submitted by a person without legal standing, is unsubstantiated, the Constitutional Court lacks jurisdiction over a disputed matter, subsidiarity requirement is not met, etc. The constitutional complaints/referrals that do not meet the mentioned requirements are not admitted for consideration on merits by the Court at a preliminary session. This rule protects the Court from ill-founded and unsubstantiated complaints/referrals and ensures realisation of effective constitutional control. It thus follows that informing the public, and particularly, potential complainants, on grounds for non-admission of a constitutional complaint/referral on merits is of great significance in order them to comprehend and identify with clarity the reasons that render a constitutional complaint/referrals inadmissible.

1.1.1. The Reasoning Requirement of Constitutional Complaints/Referrals

One of the notable preconditions for admission of a constitutional complaint/referral for consideration on merits is the reasoning requirement of constitutional complaints, which consists of several criteria. Under Article 31(2) of the “Organic Law of Georgia on Constitutional Court of Georgia”, a constitutional complaint shall be reasoned. A complainant has to demonstrate the evidence, which in their opinion, proves that the complaint is well founded. There is an almost analogous requirement in Article 16(1.e) of the “Law of Georgia on Constitutional Proceedings”.¹ An unreasoned constitutional complaint leads to its non-admissibility for consideration on merits.

The case law of the Constitutional Court shows that mostly, complaints are declared inadmissible due to two reasons: a. the reasoning provided does not apply to the disputed provision content-

¹ Present document refers to versions of the Constitution of Georgia, the “Organic Law of Georgia on Constitutional Court of Georgia” and the “Law of Georgia on Constitutional Proceedings” effective as of 15 December 2018.

wise; b. It is not substantiated that the disputed legal norm falls within the scope of the constitutional provision, which the disputed norm is allegedly incompatible with.

The reasoning provided in the complaint is not in substantive correspondence with the disputed legal norm

The reasoning requirement of a constitutional complaint refers to the correct identification of the content of the disputed norm. The Constitutional Court is limited to review and assess only actual content of a disputed norm. Case law of the Constitutional Court clearly demonstrates that complainants' incorrect perception of the content of disputed norms is a recurring issue. Specific constitutional complaints that were not admitted for consideration on merits on exactly the mentioned basis will be discussed below.

In the case of “Citizen of Georgia Konstantine Chachanidze v. the Parliament of Georgia”, the complainant disputed the norms of “Law of Georgia on Freedom of Speech and Expression”, which, on the one hand, defined obscenity and, on the other hand, permitted content regulation of speech and expression when it pertained to obscenity.² According to the complainant, any explicit word was considered as obscenity, regardless of the context and circumstances of its use. He argued that explicit words can carry a political, cultural, educational or scientific value in certain cases. He disputed the constitutionality of the regulation, which imposed sanctions laid down in the Code of Administrative Offences of Georgia, for using explicit words under any circumstances. The Constitutional Court indicated that the regulatory scope of the disputed norms only encompasses the definition of a legal term ‘obscenity’ and they do not establish a separate ground for restricting the constitutional right. Hence, the disputed norms did not contain the right-restrictive content as identified by the complainant, who were found to perceive the regulatory scope of the disputed norms incorrectly. Consequently, the Constitutional Court ruled that the constitutional complaint was unsubstantiated and declared it inadmissible for consideration on merits.

In the case of “Citizens of Georgia – Lasha Chaladze, Givi Kapanadze and Marika Todua v. the Parliament of Georgia and the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia”, the complainants disputed among others, constitutionality of the norm of “Organic Law of Georgia the Labour Code of Georgia”, which prescribed employed person’s entitlement to pregnancy, maternity and childcare leave of absence.³ The complainant stated that the disputed norm grants entitlement to leave of absence only to women, and men are exempt from exercising this right, which violates their constitutional

² Ruling №2/21/1305 of the Constitutional Court of Georgia of 4 October, 2018 in the case of “Citizen of Georgia Konstantine Chachanidze v. the Parliament of Georgia”.

³ Ruling №3/4/858 of the Constitutional Court of Georgia of 19 October, 2018 in the case of “Citizens of Georgia – Lasha Chaladze, Givi Kapanadze and Marika Todua v. the Parliament of Georgia and the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia”.

rights. According to the Constitutional Court, the text of the disputed norm grants the leave of absence to employed persons and an employed person can be a woman, as well as a man. Moreover, the Court gave emphasis to the practical application of the norm and referred to the judgement of the common court, pursuant to which, men are entitled to paid leave of absence for child care. Taking into account that neither the wording of the disputed norm, nor its interpretation in practice revealed the possibility of its application with the normative content as disputed by the complainant and that the complainant did not provide further argumentation, which would have demonstrated restriction stemming from the disputed norm, the Constitutional Court decided that the complaint lacked reasoning and the norm did not have the disputed content.

Due to the practical importance of the present document, the Constitutional Court deems it necessary to give a special emphasis to disputing the constitutionality of specific grammatical units (words) of a normative act, a problematic trend that emerged last year.

Constitutional Dispute over Specific Grammatical Units of a Normative Act

As already mentioned, its mandate limits the Constitutional Court to adjudicating the constitutionality of normative acts that can possibly violate a fundamental right or other constitutional provision. Case-law of the Constitutional Court reveals occasions, where a complainant challenged not the norm determining a specific rule of conduct, but specific words of a normative act in grammatical units, which do not allow for the identification of any rules of conduct.

The complainant in the constitutional complaint №881⁴ challenged constitutionality of words “due to visual impairment” of Article 6(4) of “Rules and Conditions of Awarding a Welfare Package” adopted by the Resolution of the Government of Georgia “on Determination of Welfare Package” with respect to number of provisions of the Constitution of Georgia. Pursuant to the mentioned Article 6(4), “right to receive a welfare package shall not generate and generated right ceases to exist in the period of public service, except for persons with profound disabilities and for persons with severe disabilities due to visual impairment”. The complainant argued that the words “due to visual impairment” forced her to refrain from employment in public service, against her will, and subjected her to discriminatory treatment. The Court pointed out that the complainant had to identify a specific rule established by a disputed norm and challenge its constitutionality. The disputed words “due to visual impairment” did not determine any rule of conduct and did not entail autonomous content. Consequently, the Constitutional Court indicated that the disputed words only represented grammatical units, which created a rule of conduct only in conjunction with other words of the norm. In view of these reasons, the Constitutional Court concluded that the disputed

⁴ Ruling №2/8/881 of the Constitutional Court of Georgia of 23 March, 2018 in the case of “Citizen of Georgia Ana Maisuradze v. the Government of Georgia”

words did not entail independent content, therefore could not result in restricting the rights of the complainant.

Constitutional complaint №1301⁵ challenged, among others, the words “from the age of 14” of Article 81¹ of the Civil Procedure Code of Georgia. Mentioned Article established a right of minors from the age of 14 to independently apply to a court for protection of their rights, in the cases determined by the legislation. According to complainant’s position, the disputed norm restricted minors under the age of 14 to independently refer to a court and, thus, violated the constitutional right to equality. The Court indicated that the text of Article 81¹ of the Civil Procedure Code of Georgia contained words, a combination of which provides the grammatical possibility of constructing several sentences with different content. However, this does not imply that each of these words establishes an independent rule of conduct and engendered restriction of complainant’s rights. Pursuant to the reasoning of the Court, the disputed words did not carry independent content and represented only grammatical units, reviewing the constitutionality of which did not fall within the mandate of the Constitutional Court. The Court further emphasised that removing grammatical units, which does not entail restrictive content, from normative acts so, that legislative regulation is shaped in a favourable manner for the complainant, exceeds the mandate of the Constitutional Court as a negative legislator. In view of these reasons, the Court ruled constitutional complaint №1301 unfounded and did not admit it for consideration on merits.

It is not substantiated that the disputed rule falls within the ambit of the constitutional provision, which the disputed rule is allegedly incompatible with

Another important precondition for admission of a constitutional complaint/referral for consideration on merits is the right relation of a disputed provision to the fundamental right enshrined in the Constitution. As a rule, the fundamental rights set forth in the Constitution, significantly differ from each other, in view of their scope, grounds for its permissible restriction and other features. For instance, the state has a broader margin of appreciation with regards to particular rights, whereas certain rights are of absolute nature and their restriction is impermissible under any circumstances. Such constitutional order leads to the necessity of correct interpretation of the content, scope, standards and grounds of interference in a specific right. This will be extremely hard in case, the restriction or interference in a right is not examined with to that Article of the Constitution, which protects the content of a specific fundamental right.

In this sense, accurate demonstration of a restriction stemming from the disputed norm and identification of a respective constitutional provision by a complainant is of crucial importance for ensuring the correct assessment of a restriction to a right. In spite of the fact that the case-law of

⁵ Ruling №2/17/1301 of the Constitutional Court of Georgia of 27 July, 2018 in the case of “Citizen of Georgia Mzia Turashvili v. the Parliament of Georgia and the Minister of Justice of Georgia”.

the Constitutional Court has delineated protective scopes of various constitutional rights in recent years, it is often the case that complainants incorrectly perceive a content of a particular fundamental right.

For instance, in the case of “the Citizen of Georgia Zurba Sanikidze v. the Parliament of Georgia” the complainant challenged Article 2 of the Law of Georgia on Adoption of Amendment to the Law of Georgia on the Acknowledgment of Citizens of Georgia as Victims of Political Repression and Social Protection of Repressed Persons.⁶ According to the disputed norm, a person, who had not yet applied to a court on the acknowledgment as a victim of political repression, had a right to file such application to a court in the period of one year from the entry into force of the mentioned Law. The complainant explained that he represented a victim of political repressions, but the limitation of entitlement to apply to a court in time deprived him of the possibility to have his rights fully redressed. The complainant challenged the disputed norm with respect to, among others, freedom of speech, opinion, conscience, religion and belief guaranteed by Article 19 of the Constitution of Georgia.

According to the interpretation of the Constitutional Court, Article 19 of the Constitution of Georgia protects a person’s private sphere, his/her freedom to have, share and/or refuse a view, religion. This provision ensures a person’s right to freely express opinions and views and not be subjected to persecution for doing so. The Court further indicated that mentioned constitutional provision does not entail a right to receive compensation for unsubstantiated restriction of opinion and view or for persecution for expression. Such cases fall within the ambit of a constitutional provision, which encompasses compensation of unlawful damages through litigation (Article 42(9) of the Constitution) and not by Article 19 of the Constitution. The Constitutional Court of Georgia identified that for the complainant a problematic aspect of the norm was that it excluded a right to be acknowledged as a victim of repression for political views expressed in the past and to receive compensation for moral and/or material damages. The complainant did not dispute the constitutionality of a restriction of expression. Consequently, the Court ruled that the disputed norm did not fall within the ambit of the right guaranteed by Article 19 of the Constitution and did not consider the complainant to have standing in this part of the complaint.

The last year also showed the trend that often complainants challenge the disputed norms with respect to a constitutional right, restriction of which is a secondary effect of a restriction stemming from a disputed norm. In the case of “Citizens of the Republic of Iraq Shehab Ahmed Hamud Hamud and Ahmed Shehab Ahmend Ahmed v. the Parliament of Georgia” the complainants disputed the norms of the Law of Georgia on International Protection, which imposed obligation on asylum seekers not to leave the territory of Georgia during the review of application for international protection and to submit a travel document to an authorised official upon the receipt

⁶ Ruling №2/11/716 of the Constitutional Court of Georgia of 15 June, 2018 in the case of “Citizen of Georgia Zurab Sanikidze v. the Parliament of Georgia”.

of a certificate of asylum seeker.⁷ The complainants argued that the regulation restricted their freedom of movement (Article 22(2) of the Constitution) as they were deprived of their travel documentation upon submission of application for international protection and could not leave Georgian territory.

Based on analysis of the disputed norm, the Constitutional Court elucidated that the disputed provision established prohibition of leaving the territory of Georgia as a precondition for the review of international protection application. The Court further asserted that imposing preconditions on realisation of certain legitimate interests can have an effect on the enjoyment of another right, but it does not automatically entail restrictions to the mentioned right. The Constitutional Court indicated that the disputed norm represented a constituent part of a regulatory rule of granting asylum to aliens and prohibition of leaving the territory of Georgia was directly connected to an authorized entity's decision-making process on a mentioned application. Furthermore, asylum seekers could, at any time, refuse their request of asylum, after which they would be able to recover travel documentation and leave the territory of Georgia. In view of these reasons, the Constitutional Court decided that the disputed norm engendered restrictions to the right to asylum, rather than to the freedom of movement. Hence, if the complainant considered that preconditions of exercising the right were unreasonable or unfounded, they should have challenged this restriction with respect to the constitutional provision, which established the right to asylum. Consequently, the Constitutional Court ruled that the disputed norm did not fall within the ambit of Article 22(2) of the Constitution and did not admit the complaint for consideration on merits.

During the last year, the case-law of the Court revealed a number of issues with regards to content-wise relation between disputed norms and respective constitutional rights. Providing the public with information about these issues will further promote better substantiation of constitutional complaints in the future. These issues are: 1) challenging norms, which are neutral towards a group of persons with respect to the constitutional right to equality; 2) proportionality of punishment and 3) challenging the disputed norm with respect to chapter 2 of the Constitution.

Challenging norms, which are neutral towards a group of persons with respect to the constitutional right to equality

Pursuant to established approach of the Constitutional Court, restriction to the constitutional right to equality before the law is evident when a disputed norm constitutes differential treatment to persons in materially similar circumstances or constitutes similar treatment for persons in materially different circumstances.

⁷ Ruling №2/5/1249 of the Constitutional Court of Georgia of 22 February, 2018 in the case of "Citizens of the Republic of Iraq Shehab Ahmed Hamud Hamud and Ahmed Shehab Ahmend Ahmed v. the Parliament of Georgia".

A disputed norm in the case of “the Public Defender of Georgia v. the Parliament of Georgia” was a rule of Law of Georgia on State Compensation and State Academic Stipends, which established a rule for calculation of compensation for judges of common courts.⁸ As explained by the complainant, the sum of compensation calculated using the rule effective by the time the constitutional complaint was lodged exceeded the sum calculated using the regulation effective from September 1 of 2012 to January 1 of 2016. The complainant believed that the fact that this rule did not encompass the period of time before adoption of the Law of Georgia on engendered unjustified differentiation between persons and violated, among others, the right to equality (Article 14 of the Constitution).

The Constitutional Court explained that the valid version of the disputed norm, as well as the version effective before amendments regulated rights of the same group of persons (judges). Moreover, the disputed norm did not establish a differential regime for any group of people, it laid down a new rule for calculation of compensations, which was treated every judge equally. Consequently, the disputed norm established different legal regime equally for every person enjoying this right and no particular group has been treated differentially. Therefore, the complaint could neither substantiate a differential treatment towards a group of persons, nor elucidate substantive relation between the disputed norm and Article 14 of the Constitution. In light of these reasons, the complaint was declared inadmissible in this part.

Due to identical grounds, the Constitutional Court declared constitutional complaint №1253 unfounded.⁹ In the case (“Citizen of Georgia Levan Alapishvili and NNLE “Centre future initiatives” v. the Parliament of Georgia”) the complainant challenged constitutionality of number of norms of Organic the Law of Georgia the Election Code of Georgia, which restricted the registration of an election observer organization until the announcement of the exact date of elections. The complainant argued that the disputed norms violated their right to equality before the law.

The Constitutional Court opined that the rules regarding the registration as observer organisations and requirements for observer organisations laid down by the disputed norms applied to every subject and differential treatment between persons was not discernible. Registration right was restricted to every person willing to register as an observer in an identical way. Therefore, the disputed norms did not entail to position any group of people in a differential legal regime. In the view of these reasons, the Constitutional Court declared that the claimant could not substantiate the existence of differential treatment and did not admit the complaint for consideration on merits.

⁸ Ruling №2/4/1292 of the Constitutional Court of Georgia of 22 February, 2018 in the case of “the Public Defender of Georgia v. the Parliament of Georgia”.

⁹ Ruling №3/6/1253 of the Constitutional Court of Georgia of 19 October, 2018 in the case of “Citizen of Georgia Levan Alapishvili and NNLE “Centre future initiatives” v. the Parliament of Georgia”.

Proportionality of Punishment

The Constitutional Court has long established the approach that in the area of criminal policy and, more specifically, in the determination of punishment for criminal conduct, the legislator has a broad margin of appreciation. However, punishment measure selected by the legislator and its proportionality are not completely beyond constitutional control. The scope of legislator's actions is limited by the requirements of fundamental human rights and freedoms. According to the Constitutional Court, punishment measure imposed for specific unlawful conduct may become the subject of the constitutional review only in critical cases, when the punishment measure is apparently unreasonable and disproportionate. Therefore, in cases of disputes on proportionality of criminal punishments complainants must demonstrate apparent disproportional nature of a disputed punishment.

As opposed to mentioned requirement, in part of constitutional complaints submitted last year, complainants only generally indicated to disproportionality and did not substantiate specifically what circumstances constitute apparent disproportionality of punishment measures. For instance, in the case of “the Public Defender of Georgia v. the Parliament of Georgia” the Public Defender challenged the constitutionality of all the provisions of the Code of Administrative Offences, which imposed administrative detention as a penalty.¹⁰ The complainant argued that detention as a penalty for administrative offences is disproportionately severe and contravenes with the constitutional prohibition of the use of inhuman and degrading punishment which violates human dignity (Articles 17(1) and 17(2) of the Constitution of Georgia).

The Constitutional Court asserted that in such cases complainants must substantiate that a specific measure of punishment is severe to the extent that it can qualify as a restriction of the constitutional right. Moreover, the interrelation between severity of the unlawful conduct and respective punishment has to be taken into account in the process of assessment of the proportionality of punishment. In the discussed complaint, the complainant appealed only to the fact that these offences were prescribed in the Code of Administrative Offences and not in the Criminal Code. The Constitutional Court indicated that merely the general argument according to which administrative offences cannot reach the intensity to which validates constitutionality of corresponding administrative detention, is not sufficient to substantiate disproportionality of punishment. This requires demonstration of apparent disproportionality of the punishment (penalty) provided for by the disputed norms with respect to the severity of specific unlawful conduct and public harm stemming from it. Taking into account this deliberation, the Constitutional Court ruled that the complainant did not substantiate alleged restriction of the right guaranteed by Articles 17(1) and 17(2) of the Constitution of Georgia and declared it inadmissible.

¹⁰ Ruling №1/10/1290 of the Constitutional Court of Georgia of 6 December, 2018 in the case of “the Public Defender of Georgia v. the Parliament of Georgia”.

The Constitutional Court dismissed constitutional complaint №1292 on the preliminary stage on the basis of similar argumentation.¹¹ In this complaint the Public Defender argued for unconstitutionality of punishment measure for transfer of prohibited items to an accused/convicted person or to a person placed in a liberty restriction facility or penitentiary facility, or in other place of detention, during his/her removal/transfer or extradition, also to a person in temporary detention facility or guardhouse (imprisonment for up to 3 years).

The Constitutional Court elucidated that criminalization of conducts envisaged by the disputed norms served valuable legitimate aims such as public security, maintenance of order and ensuring safe environment in penitentiary facility or in other places of detention, unhindered operation of these facilities, prevention of disorganization, destabilisation and crime, prevention of escapes from penitentiary facilities, protection of life and health of inmates and employees of these facilities, including protection of inmates from harm and self-injuries, etc. The Constitutional Court pointed out the exceptional necessity of protecting security in penitentiary facilities or other places of detentions due to high-risk nature of these facilities, which equipped the legislator with broad authority in the determination of the composition of respective crimes and measures of punishment. The complainant did not provide for concrete argumentation to substantiate why this conduct contained low risks and what demonstrated apparent disproportionality of the punishment with respect to these risks. In view of these reasons, the Constitutional Court found the complaint unsubstantiated and declared it inadmissible.

Challenging the disputed norm with respect to chapter 2 of the Constitution

As already mentioned, a complainant must demonstrate evident substantive relation between a disputed norm and a respective constitutional provision. In cases when a complainant challenges a disputed norm with respect to chapter 2 of the Constitution in general, a constitutional complaint is considered unfounded and is declared inadmissible without a review of substantive relation with each and every constitutional provision.

In the case of “Ltd “Navtlughi” v. the Parliament of Georgia” the complainant disputed constitutionality of Article 3(10) of Law of Georgia on Entrepreneurs with respect to chapter 2 of the Constitution of Georgia.¹² The disputed norm determined responsibility, contribution, rights to receive and control information for entrepreneur subjects. The complainant argued that this norm, due to its ambiguity, accrued significant expenses for entrepreneur subjects and violated their rights. The complainant also mentioned that detailed substantiation for claims would be introduced on the hearing on merits.

¹¹ Ruling №1/6/1292 of the Constitutional Court of Georgia of 19 October, 2018 in the case of “the Public Defender of Georgia v. the Parliament of Georgia”.

¹² Ruling №1/12/1310 of the Constitutional Court of Georgia of 6 December, 2018 in the case of “Ltd “Navtlughi” v. the Parliament of Georgia”.

The Constitutional Court asserted that in order for a constitutional complaint to be admitted for consideration on merits, a complainant must substantiate that a disputed norm falls within the ambit of a respective constitutional right, which was not the case in this complaint. According to the position of the Court, allegations about the violation of chapter 2 of the Constitution, without identification of a particular right, cannot be deemed as a proper substantiation of a complaint. The Constitutional Court further indicated that the claimant's promise to present detailed substantiation on the hearing on merits could not result in complaint's admission for consideration on merits, as in order for a complaint to pass the preliminary stage, proper substantiation is required to be found in the complaint itself and not orally, on the hearing on merits. In view of these considerations, the Constitutional Court declared the complaint inadmissible.

1.1.2. Submission of Constitutional Complaint by a Person with Standing

Under Article 18(b) of the "Law of Georgia on Constitutional Proceedings", a constitutional complaint should be filed by a person, who has standing. The "Organic Law of Georgia on the Constitutional Court of Georgia" determines the list of persons who are entitled to litigate under various competencies of the Constitutional Court. Case law of the Court in 2018 revealed a number of basic issues related to correct identification of authorised subjects for submission of a complaint. These issues will be discussed in details in the present document.

i) The disputed provision does not apply to a person

In order for a natural or legal person to have standing for bringing a constitutional complaint, he/she has to substantiate that the disputed provision applies to them or there is an actual probability that the provision will apply. Hypothetical assumption alone that the disputed norm will someday apply to a complainant is not sufficient to be acknowledged as a person with standing.

In the case of "Citizen of Georgia Giorgi Vashadze v. the Parliament of Georgia" the complainant challenged a norm of the Law of Georgia on State Pension, which determined the age of emergence the right to a state pension. As stipulated by the disputed norm, this age is 65 in case of men and 60 in case of women. The complainant argued that the disputed norm constituted discrimination on the ground of sex.

The Constitutional Court emphasised the age of the complainant, who was 36 at the time of the case review and indicated that his claim referred to exercise of the right to receive a state pension in 24 years, by the time he would become 60. According to the Court's position, asserting with strict confidence that, taking into account possible changes to the legal framework and to a relationship regulated by the disputed norm, it will have the same content in 24 years and the

complainant will be subjected to differential treatment is impossible. Therefore, the Court ruled that due to such long timeframe, the complainant could not substantiate that the disputed norm would engender restriction of his right in foreseeable future and denied the complaint admission for consideration on merits.¹³

Actio Popularis

Natural and legal persons are entitled to bring the complaint only in case, if they believe, that their own rights and freedoms have been violated or may be violated.¹⁴ Organic Law of Georgia on the Constitutional Court of Georgia does not entitle natural and legal persons with the right to refer to the Court with Actio Popularis. The legislation entitles only special actors to apply to the Court for the protection of the rights of others.¹⁵

In the case of “Citizen of Georgia Koba Kobakhidze v. the Parliament of Georgia” a complainant was a lawyer, who disputed number of norms of Criminal Code of Georgia, Criminal Procedure Code of Georgia and Law of Georgia on Combating Drug-related Crime and argued that the disputed norms imposed unjustified restrictions to the constitutional rights of his clients. The complainant only alleged about the violation of his clients’ rights and did not present argumentation that the disputed norms had applied to him directly. The complainant neither argued for the possibility of application of the disputed norms to him in the future. Taking into consideration all the above mentioned, the Constitutional Court ruled that the complainant was disputing violation of other’s rights, did not consider him to be a person with standing and denied admission of the complaint for consideration on merits.¹⁶

On the same ground, the Constitutional Court did not recognise as a person with standing the complainant in the case of “NNLE “Association of Business Operators, Exporter-importers and Water Industry Companies” v. the Government of Georgia”. The complainant challenged a norm of a technical regulation adopted by the Ordinance №719 of December 26 of 2014 of the Government of Georgia on Adoption of Technical Regulations for Packaged Natural Mineral Water and Spring Water, which established a procedure for evaluation of standards of packaged natural mineral water and spring water. As argued by the complainant, the disputed regulation permitted only direct producers to export mineral water and spring water and prohibited these activities for other business operators.

¹³ Ruling №2/7/1258 of the Constitutional Court of Georgia of 22 February, 2018 in the case of “Citizen of Georgia Giorgi Vashadze v. the Parliament of Georgia”.

¹⁴ Organic Law of Georgia on the Constitutional Court of Georgia, Article 39(1)(a).

¹⁵ See, for example, Organic Law of Georgia on the Constitutional Court of Georgia, Article 39(1)(b).

¹⁶ Ruling №1/11/1302 of the Constitutional Court of Georgia of 6 December, 2018 in the case of “Citizen of Georgia Koba Kobakhidze v. the Parliament of Georgia”.

The Constitutional Court explained that the complainant disputed a violation to others' rights, as they were not a business operator and appealed on the restriction of entrepreneurial freedom of business operators who were not direct producers and were precluded from exporting the discussed goods. This detail clearly demonstrated that the constitutional complaint was indeed "actio popularis". Accordingly, the Court declared that complainant did not have standing to argue on the constitutionality of the mentioned measure and refused to admit the complaint for consideration on merits.¹⁷

Complainant's right to apply to the Court within the scope of appropriate competence

According to the legislation on constitutional proceedings, natural and legal persons are entitled to challenge a normative act only with respect to constitutional rights and freedoms guaranteed in Chapter 2 of the Constitution. However, complainants often bring a case to the Constitutional Court, disputing the constitutionality of the norms with respect to the provisions of the Constitution, which are not encompassed in Chapter 2. Precisely this was the issue in the case of "Citizens of Georgia – Ilia Kokaia and Giorgi Kapanadze v. the Parliament of Georgia". The complainants in this case challenged the constitutionality of the words "contradicts public order or moral norms" of Article 54 of the Civil Code of Georgia. As they claimed, the disputed regulation was in contradiction, among others, with Article 7 of the Constitution.

The Constitutional Court indicated that individuals are entitled to dispute constitutionality of a normative act only with respect to constitutional rights and freedoms guaranteed in Chapter 2 of the Constitution. Article 7 of the Constitution is not incorporated in the Second Chapter. Consequently, based on the complaint lodged by individual the Court was not authorised to review constitutionality of the disputed norm with respect to the mentioned constitutional provision. Therefore, in this part, the complaint was lodged by a person without standing.¹⁸

1.1.3. Jurisdiction of the Constitutional Court of Georgia

Under Article 18(c) of the Law of Georgia on Constitutional Proceedings, constitutional complaint or referral will not be admitted for consideration, if none of the raised issues fall within the jurisdiction of the Constitutional Court. Article 89(1) of the Constitution of Georgia, as well as Article 19 of the "Organic Law of Georgia on Constitutional Court of Georgia", lists the cases falling within the jurisdiction of the Constitutional Court. The Constitutional Court frequently faced the necessity for the definition of its competence during the last year.

¹⁷ Ruling №1/9/1336 of the Constitutional Court of Georgia of 19 October, 2018 in the case of "NNLE "Association of Business Operators, Exporter-importers and Water Industry Companies" v. the Government of Georgia".

¹⁸ Ruling №3/1/707 of the Constitutional Court of Georgia of 30 March, 2018 in the case of "Citizens of Georgia – Ilia Kokaia and Giorgi Kapanadze v. the Parliament of Georgia".

For instance, in the constitutional complaint №760 the complainant challenged the constitutionality of Articles 13(2) and 13(3) of Law of Georgia on State Compensation and State Academic Stipends with respect to Article 14 of the Constitution. The disputed norms established the grounds for allocating compensation for the former members of Supreme Council appointed in 1990. As argued by the complainant, the disputed regulation constituted unjustified differentiation, as it excluded the members of Supreme Council of Soviet Socialist Republic appointed in 1990 from the sphere of persons entitled to state compensation. The complainant disputed constitutionality of the disputed norms on the basis of Article 14 of the Constitution so, that members of Supreme Council of Soviet Socialist Republic appointed in 1990 would be granted a state compensation.

As asserted by the Constitutional Court, in this case, complainants claim did not aim to abolish a specific normative content, but rather to create new normative content. Upholding such a claim and granting a right to state compensation to the complainants goes beyond the jurisdiction of the Constitutional Court. Consequently, constitutional complaint №760 was not admitted for consideration on merits.¹⁹

In the case of “Citizens of Georgia – Koba Epatashvili, Khvicha Kirmizashvili, Levan Gabashvili, Badri Bejanidze and others (9 complainants in total) v. the Parliament of Georgia” the complainant challenged Article 16 of the Law of Georgia of 28 December of 2012 on Amnesty with respect to Article 14 of the Constitution. The disputed norm envisaged reduction by one-fourth of the sentence for particular categories of inmates. The complainant argued that the disputed norm should have applied to inmates who are imprisoned for life too, so that they would have an opportunity of reduction of sentence. The Constitutional Court explained that this claim was substantively equivalent to a creation of a positive provision in the legislation, which is part of the legislative process and did not fall within the mandate of constitutional control. Consequently, constitutional complaint №828 was not admitted for consideration on merits.²⁰

Constitutional complain №1274 contained substantively same deficiency. This complaint disputed, among others, the constitutionality of Article 70(1) of Organic Law of Georgia on Common Courts with respect to Article 14 of the Constitution. According to the disputed norm, “upon expiry of the term of office or reaching retirement age, a Supreme Court judge shall be awarded a state compensation of GEL 1 200”. The complainant elaborated that state compensation for a Supreme Court judge is 1200 GEL, whereas District (City) and Appellate Court judges receive - 560 GEL. Moreover, state compensation is awarded to a Supreme Court judge upon expiry of their term, in contrast with judges of Common Courts. The complainant, referring to Article 14 of the

¹⁹ Ruling №2/1/760 of the Constitutional Court of Georgia of 22 February, 2018 in the case of “Citizens of Georgia – Vileni Alavidze, Tengiz Uchaneishvili, Irakli Motserelia and others (52 complainants in total) v. the Parliament of Georgia”.

²⁰ Ruling №1/4/828 of the Constitutional Court of Georgia of 19 October, 2018 in the case of “Citizens of Georgia – Koba Epatashvili, Khvicha Kirmizashvili, Levan Gabashvili, Badri Bejanidze and others (9 complainants in total) v. the Parliament of Georgia”.

Constitution, claimed unconstitutionality of the disputed norms so, that District (City) and Appellate Court judges would be awarded a state compensation in the amount and conditions equal to Supreme Court judges.

The Constitutional Court reiterated that the complainant aimed for the creation of new normative content and review of this matter exceeded the mandate of the Constitutional Court. Consequently, constitutional complaint №1274 was not admitted for consideration on merits.²¹

1.1.4. All the Issues raised in the Constitutional Complaint or Referral are already decided by the Constitutional Court

Under Article 18(d) of the Law of Georgia on Constitutional Proceedings, a constitutional complaint or referral will not be admitted for consideration on merits, if “all the issues raised in it are already decided by the Constitutional Court except for the cases provided in Article 211 of the Organic Law of Georgia on the Constitutional Court of Georgia”.

This legislative provision serves the goal of cost-effectiveness of litigation and authorizes the Constitutional Court not to consider those issues, which has already been decided once. At the same time, the above cited provision allows for reconsideration of the case law of the Court in the case provided by Article 211 of the Organic Law of Georgia on the Constitutional Court of Georgia, when “the board of the Constitutional Court decides, that its position with regard to the pending case differs from the legal position provided in the previously adopted judgement (judgements) of the Court”.

In the case of “Citizens of Georgia – Ilia Kokaia and Giorgi Kapanadze v. the Parliament of Georgia complainants challenged, among others, constitutionality of the words “contradicts with public order or moral norms” of Article 54 of the Civil Code of Georgia with respect to Articles 21(1) and 21(2) of the Constitution.

The Constitutional Court elucidated that constitutionality of the disputed norm had already been reviewed by the Court. In particular, the Constitutional Court assessed constitutionality of the disputed words of Article 54 of the Civil Code of Georgia in the judgement №3/7/679 of December 29 of 2017 in the case of LLC „Broadcasting Company Rustavi 2“ and LLC „Television Company Sakartvelo“ v. The Parliament of Georgia and declared the disputed norm in compliance with the Constitution. Therefore, the issues in the constitutional complaint mentioned above had already been decided by the Constitutional Court. Furthermore, the Constitutional Court agreed

²¹ Ruling №3/7/1274 of the Constitutional Court of Georgia of 19 October, 2018 in the case of “Citizen of Georgia – Omar Jorbenadze v. the Parliament of Georgia”.

with the legal position substantiated in the judgement №3/7/679 of December 29 of 2017. Consequently, constitutional complaint №1274 was not admitted for consideration on merits.²²

In the case of “Business Entity of Foreign State “Ltd IDS Borjomi Beverages Company” v. the Parliament of Georgia and the Minister of Finances of Georgia” the complainant challenged, among others, constitutionality of Article 192¹ the Tax Code of Georgia and Sections 1, 2, 4 and 8 of Article 78¹ of the Ordinance №996 of December 31, 2010 of the Minister of Finances of Georgia on Tax Administration with respect to Articles 21(1), 21(2) and the first sentence of Article 30(2) of the Constitution. The complainants challenged constitutionality of marking of goods and obligation of payment of the nominal value of marking prescribed by the disputed norms.

The Constitutional Court indicated that the disputed norms had already been reviewed by the Court. On July 26, 2018 the Constitutional Court rendered a judgement №2/5/700 in the case of “” Ltd Coca-Cola Bottlers Georgia” “Ltd Castel Georgia” “JSC Tskali Margebeli” v. the Parliament of Georgia and the Minister of Finances of Georgia”. The Constitutional Court upheld the disputed norms and ruled that they were in compliance with the right to property and freedom of enterprise guaranteed by the Constitution. Therefore, claim posed in the constitutional complaint №875 had already been decided by the Constitutional Court, on account of which in this part of the claim constitutional complaint was not admitted for consideration on merits on the basis of Article 18(d) of the Law of Georgia on Constitutional Proceedings.²³

1.1.5. Subsidiarity

Under Article 18(g) of the Law of Georgia on Constitutional Proceedings, a constitutional complaint or referral will not be admitted for consideration on merits “if the full review of constitutionality of the disputed subordinate normative act is impossible without review of constitutionality of the normative act that is superior to the challenged act in the hierarchy of normative legal acts, however the latter is not disputed under the constitutional complaint.”

During 2018 the Constitutional Court applied this norm as a ground for inadmissibility of a claim only once, in the case of “Citizen of Georgia Aleksandre Mdzinarashvili v. the National Commission of Communications of Georgia”. The complainant challenged constitutionality of Subparagraph ‘b’ of Paragraph 2 of Article 10³, Subparagraph ‘g’ of Paragraph 4 of Article 25 and Subparagraph ‘b’ of Paragraph 5 of Article 25 of the Regulation approved by the Resolution N3 of the National Commission of Communications of Georgia on the Approval of the Regulations on the Provision of Services and on the Protection of Users’ Rights in the Field of

²² Ruling №3/1/707 of the Constitutional Court of Georgia of 30 March, 2018 in the case of “Citizens of Georgia – Ilia Kokaia and Giorgi Kapanadze v. the Parliament of Georgia”.

²³ Ruling №2/18/875 of the Constitutional Court of Georgia of 4 October, 2018 in the case of “Business Entity of Foreign State “Ltd IDS Borjomi Beverages Company” v. the Parliament of Georgia and the Minister of Finances of Georgia”.

Electronic Communications with respect to Article 23(1) and 23(2) of the Constitution of Georgia. The complainant disputed constitutionality of a restriction on distribution of pornographic content.

The Constitutional Court pointed out that distribution of pornographic content is prohibited by Article 255 of the Criminal Code of Georgia. The complainant only disputed the restrictions imposed by the Regulations on the Provision of Services and on the Protection of Users' Rights in the Field of Electronic Communications. The Constitutional Court asserted that comprehensive deliberation of this restriction imposed by a subordinate normative act was impossible without reviewing constitutionality of Article 255 of the Criminal Code of Georgia. Therefore, the Constitutional Court declared the complaint inadmissible in this part of the claim.²⁴

1.2. Disputed Legal Norm(s) Overruling Judgements

1.2.1. Plenary Session

Citizens of the Hellenic Republic – Prokoph Savvid and Diana Shamanid v.the Parliament of Georgia

On December 7, 2018 the Plenary Session of the Constitutional Court of Georgia upheld the complaint of the citizens of the Hellenic Republic - Prokoph Savvid and Diana Shamanid (Constitutional Complaint №1267 and №1268) and declared Article 22(3³) of the Law of Georgia on Agricultural Land Ownership unconstitutional. The disputed provision suspended the operation of the rule prescribing the possibility for a foreign citizen to own agricultural land in Georgia, and the said suspension was intended to last until the changes to the Constitution of Georgia entered into force.

The complainants stated that the disputed provision restricted their constitutional right to property protected by Article 21 of the Constitution, as they were deprived of the possibility to gain ownership over agricultural land (including the land they inherited). In addition, these constitutional complaints claimed that the law in question was identical to the regulation that has already been declared invalid by the Constitutional Court on two separate occasions in the judgement N3/1/512 and the ruling N1/2/563, adopted respectively on 26 June 2012 and 24 June 2014. Accordingly, the complainants appealed to the Constitutional Court to invalidate the disputed legislative provision at the preliminary stage without hearing the cases on merits.

²⁴ Recording Notice №1/8/1275 of the Constitutional Court of Georgia of 19 October, 2018 in the case of "Citizen of Georgia Aleksandre Mdzinarashvili v. the National Commission of Communications of Georgia".

The respondent, the Parliament of Georgia, observed that the new constitutional provision, which had not yet entered in force by the time of the hearing, modified the substance of the right to property by prohibiting foreign nationals to gain ownership of agricultural land in Georgia. The respondent further contended that it still maintained the legitimate aims that it had identified with respect to the provision declared unconstitutional under the decision №3/1/512 of 26 June 2012. The respondent argued that the disputed law served the objectives of protection of state sovereignty, development of agriculture, and preservation of stability in the fields of economics and public health.

The Constitutional Court found the disputed provision identical to the law that restricted foreign citizens in gaining ownership over agricultural land in Georgia and was originally declared unconstitutional in the judgement №3/1/512 of 26 June 2012. Moreover, the Court determined that the legitimate aims of the formerly invalidated law were similar to the ones asserted by the respondent in the present case.

The Constitutional Court emphasised the temporary character of the prohibition and noted that arbitrary restriction of the right is unconstitutional regardless of whether it is permanent or temporary by nature. In the case at hand, given that the prohibition examined in the judgement №3/1/512 of 26 June 2012 lacked a reasonable link with the asserted legitimate aims, the temporary nature of the current provision was not deemed as a difference urging the consideration of the cases on merits.

The respondent argued that, although the constitutional amendments had not yet entered into force, they were intended to create a distinct legal framework, and, thus, it was necessary to consider the cases on merits. However, the Court did not accept this argument and noted that the changes to the Constitution could not be considered as being integral to the national constitutional framework until they take effect. Hence, the amendments to the Constitution of Georgia that come into force at a later date are not meant to influence the scope of the constitutional right to property as it is today.

The Court held that its constitutional interpretation, reiterated on two different occasions in 2012 and 2014, applied to the present case, and that there was no need to change the existing case-law. Accordingly, the Constitutional Court declared the disputed provision unconstitutional at the preliminary stage without hearing the cases on merits.

A joint dissenting opinion of three members of the Constitutional Court of Georgia - Eva Gotsiridze, Manana Kobakhidze and Merab Turava - is attached to the decision.

1.2.2. The First Board

Citizens of Georgia – Zurab Japaridze and Vakhtang Megrelishvili v. the Parliament of Georgia

On April 27 2018, the First Board of the Constitutional Court of Georgia adopted the ruling in the case of “Citizens of Georgia – Zurab Japaridze and Vakhtang Megrelishvili v. the Parliament of Georgia (constitutional complaint №1282).

The complainants challenged normative content of the wording “or/and consumption without medical prescription of section 1 of Article 273¹ of the Criminal Code of Georgia which provided for criminal liability for consumption of narcotic substance – Marijuana indicated in 92th horizontal cell of the second appendix of the law of Georgia On Narcotic Drugs, Psychotropic Substances And Precursors, and Narcological Assistance and normative content of the wording “or/and consumption without medical prescription” of section 1 of Article 45 of the Administrative Offences Code of Georgia which provided administrative liability for consumption of narcotic substance – Marijuana indicated in 92th horizontal cell of the second appendix of the law of Georgia on Narcotic Drugs, Psychotropic Substances And Precursors, and Narcological Assistance, with respect to Article 16 of the Constitution of Georgia.

According to the Constitutional Complaint the disputed provisions imposed punishment for consumption of narcotic substance – Marijuana. The complainants asserted that the disputed provisions contained rules with the same content, as the rule declared unconstitutional by the Constitutional Court in the judgement №1/13/732 of 30 November, 2017. The complainants indicated that the only formal difference between the disputed provision of the Criminal Code of Georgia and the provision declared unconstitutional by the judgement №1/13/732 of the Constitutional Court was the fact that the disputed provision was set in another Article of the Criminal Code of Georgia. According to the complainants, the only difference between the disputed provision of the Administrative Offences Code of Georgia and the provision declared unconstitutional was the amount of consumption. Namely, the disputed provision provided liability for one-time consumption of marijuana, but the provision declared unconstitutional prescribed liability for repeated consumption of marijuana. Therefore, they sought for invalidation of the challenged provisions at the preliminary session, without consideration on merits.

The Constitutional Court decided that the disputed provision of the Criminal Code of Georgia contained content word-by-word identical to the invalidated rules had the same subject and the scope of regulation. The only formal difference was the fact, that currently disputed provision was set in another Article of the Criminal Code of Georgia, which was not considered by the Constitutional Court of Georgia to be essentially differentiating factor in the adjudication of this case.

In view of the above mentioned, the disputed provision of the Criminal Code of Georgia was considered as overruling of the judgement №1/13/732 of the Constitutional Court of Georgia of 30 November, 2017 and was declared invalid without consideration of the case on merits.

The Constitutional Court did not uphold the motion of the complainants on invalidation of the challenged provision of the Administrative Offences Code of Georgia in the preliminary proceedings, without consideration on merits. Therefore, the constitutional complaint was admitted for consideration on merits in the mentioned part.

1.3. Judgements

1.3.1. Plenary Session

N(N)LE “Green Alternative“ against the Parliament of Georgia

On 18 December, 2018 the Plenary Session of the Constitutional Court of Georgia adopted the judgement in the case of “N(N)LE “Green Alternative“ v. the Parliament of Georgia“ (constitutional complaint №752).

In this case, the subject of dispute was the constitutionality of the particular words of Article 29 of the Law of Georgia “On Subsoil” with respect to article 37(5) and article 41(1) of the Constitution of Georgia.

Pursuant to the disputed regulation, information on the geological structure of subsoil, mineral resource reserves and other resources, mining and technical conditions for the development of a mineral deposit, and on other properties or parameters, which is included in the State Information Fund, is the property of an entity, by whose means such information has been obtained. Therefore, it is prohibited to give mentioned information to other legal or natural persons without the consent of the owner of the information.

According to the complainant, subsoil is part of the environment and belongs to state property, public good. Respectively, information on the subsoil is not protected under private property right and everyone should have access to it, even though its extractor is not directly the state. Subsequently, the complainant argued that restriction of access for the public to such information

violated everyone's right to obtain information about environmental conditions (article 37(5) of the Constitution of Georgia) and the right to access to official documents stored in state institutions (article 41(1) of the Constitution of Georgia).

The respondent, the representative of the Parliament of Georgia, disagreed with the position of the claimant. According to them, article 41(2) of the Constitution of Georgia establishes state's obligation, not to disseminate the information entrusted to the latter in the manner that infringes the rights of owners of the information. The Respondent pointed out that information stipulated by the disputed regulation, is obtained by private persons, is their intangible property and has an economic value. Therefore, disclosure of the mentioned information would impose unjustifiable restrictions on the property owner's rights and entrepreneurial freedom. Based on provided arguments, the Respondent considered that the constitutional complaint should not be upheld.

In the given case, the Plenary Session of the Constitutional Court of Georgia changed its well-established case-law, according to which, the right to access to the information stored in state institutions, which was related to health, finances, or other private matters of an individual, was not protected under article 41(1) of Constitution of Georgia. According to the Constitutional Court of Georgia, article 41(1) of Constitution of Georgia protects *inter alia* the right to access to the information stored in state institutions that is related to private issues of other persons. In turn, the right to be protected from disclosure of such information is recognised by article 41(2) of Constitution of Georgia, although this circumstance does not preclude mentioned information from the protected sphere of article 41(1) of the Constitution of Georgia. The court emphasised, that it is necessary, to determine the fair balance between these two confronted rights in every particular case.

The Constitutional Court acknowledged that article 41(1) of the Constitution of Georgia protects *inter alia* the right to access to information about subsoil, which according to the law is stored to the State Information Fund. Disputed regulation prohibited disclosure of the mentioned information to other persons without the consent of the owner of the information. Respectively, it constituted a restriction to the constitutional right to access to official documents stored in state institutions.

The Constitutional Court of Georgia indicated that the disputed regulation pursued to achieve valuable legitimate aims, such protection of the property rights, entrepreneurial freedom and freedom of competition of the owner of the information on the geological structure of subsoil, as well as ensuring rational use of minerals. The Constitutional Court of Georgia pointed out that in the absence of the disputed norm, any person would have access to the information about subsoil parameters, protected in the State Information Fund. This would have a negative effect on the rights of the owners of the information and would impede entrepreneurial activity related to

mining, as well as the commercial interest in researching this field would be reduced and development of the sphere of usage of the subsoil would be hindered.

The Plenary Session of the Constitutional Court of Georgia further noted that possession of the information stipulated in the disputed norms is a commercial good itself. The value of such information is revealed not only in the use of it in the process of extraction of subsoil, but it is also useful for making significant commercial decisions. Access to such information would make it possible for third parties to use it for their own economic goals, which would cause the devaluation of information. Consequently, it would exclude interest in purchasing such information and it would become pointless to find such information by their own resources. Therefore, it was impossible to achieve legitimate aims of the disputed norm by the same effectiveness without closing the information. Finally, the Constitutional Court of Georgia determined that the right to access to information about the structure of subsoil was outweighed by the information owner's property right, entrepreneurial freedom and the need to protect the interests of rational use of subsoil. Respectively, the Constitutional Court of Georgia found that there was a fair balance between private and public interests in the case.

In light of these reasons, the Constitutional Court of Georgia concluded that the restriction on the right to access to information stored in state institutions was justified and the disputed rule was constitutional with respect to article 41(1) of the Constitution of Georgia.

In the present judgement, the Constitutional Court of Georgia interpreted the scope of state's obligation laid down in Article 37(5) of the Constitution of Georgia and underlined that this constitutional provision establishes the obligation of the state to collect, process and provide any interested person with complete and objective available information about environmental conditions. In the process of collection and ensuring the availability of this information, the state is authorized to select a form of obtaining and processing the information. In particular, the state has legitimate freedom to obtain the information itself and make it available to the public, as well as to provide access to the information collected by private individuals. At the same time, the state is not obliged to use any specific form to inform the public about environmental conditions.

The Constitutional Court of Georgia noted that the regulatory scope of the disputed norm did not include the rule and conditions for the implementation of the positive obligation of the state to collect information on the environment and to make available it to the public. The disputed norm prohibits to disclosure information, which is stored in the State Information Fund, without the consent of the owner of the information, however, it does not impede the possibility of the state to collect itself, process and make available to the public information about the environmental condition. Furthermore, for these purposes, the state is not restricted to the use of the information stored in the State Information Funds. As it was mentioned above, article 37(5) of the Constitution

of Georgia does not establish the state's obligation to inform the public about environmental conditions necessarily by disclosing the information, collected by private individuals.

In view of all the above-mentioned, the Constitutional Court of Georgia concluded that there had been no interference with the right to get information about environmental conditions, guaranteed by Article 37(5) of the Constitution of Georgia.

Citizens of Georgia – Jimsher Tskhadadze and Mamuka Chanturia v. Parliament of Georgia

On 14 December 2018, the Constitutional Court of Georgia upheld the constitutional complaint №767 and №1272 of Georgian citizens Jimsher Tskhadadze and Mamuka Chanturia vs. the Parliament of Georgia.

The disputed provision established the upper age limit of 50 for serving as a bailiff. The complainants indicated that the quality of exercising functions vested on bailiffs is linked to the individual abilities of the person rather than the age. Therefore, the disputed norm which excluded persons above 50 from serving as a bailiff was discriminatory and restricted the right to hold public office and exercise public service.

According to the Respondent, the restriction prescribed by the disputed norm served to promote the effectiveness and unhindered functioning of the Bailiff's Office. As a rule, reaching the limited age established by the disputed norm, in most cases causes the decline of the abilities necessary for the fulfilment of the duties of the bailiff. This consideration was a basis for bailiffs above 50 years to be dismissed from the office.

The Constitutional Court emphasised that effective and unhindered fulfilment of the duties of the bailiff, promoting the security of the common courts and the High Council of justice is a crucial legitimate interest for which the legislator is authorised to set age limitations for the right to hold a public office and exercise a state service. The Court noted, according to the analysis of relevant legislation, that a bailiff is authorized to use physical force, special equipment and a weapon in circumstances prescribed by the law. Hence, unhindered fulfilment of these duties depends on the bailiff's physical preparation and health conditions. However, the evidence examined by the Court did not demonstrate that a person's physical abilities decline above the age of 50 so, that they could not fully perform their duties as a bailiff, which in certain cases required the use of physical force, weapon or special equipment. The Court also highlighted the individual nature of physical strength decline. The Court, based on the explanation of the specialist, declared that the decline of physical abilities or deterioration of health conditions are not directly linked to attaining 50 as prescribed by the disputed provision.

The Constitutional Court held that it was possible to check every individual's physical ability to observe whether he/she is compatible with the requirements of the bailiff. Consequently, these circumstances reveal that there is no necessity of dismissing bailiffs on the basis of reaching the disputed age. Moreover, the Court pointed out that in certain circumstances setting the age limit for being appointed to a public office could be justified even if a person is fully capable of fulfilling his/her duties. Namely, the right could be restricted for those who are close to the limited age if this would complicate their replacement by the time of reaching the respective age and stability and effectiveness of human resources in the service would be jeopardized. However, the respondent did not substantiate the existence of an actual threat to the effectiveness of the Bailiff's Office which would also raise an issue of security in the Common Courts and the High Council of Justice.

With respect to the alleged discriminatory nature of the disputed norm, the Court held that the differential treatment served the same legitimate purpose already referred to by the respondent while arguing the compatibility with the right to hold public office and exercise public service. Therefore, the Court based its decision on previously discussed circumstances and ruled that differential treatment among bailiffs under 50 years on the one hand and bailiffs above 50 years on the other were substantially equal and the disputed norm imposed an unjustifiable differential treatment and was discriminatory.

Based on these merits, the Constitutional Court held that the disputed provision violated the right to equality (Article 14 of the Constitution of Georgia) and the right to hold public office and exercise public service (Articles 29.1 and 29.2 of the Constitution of Georgia).

1.3.2. The First Board

LEPL Evangelical-Baptist Church of Georgia and others v. the Parliament of Georgia

On 3 July 2018, the First Board of the Constitutional Court of Georgia issued judgements on the cases: "LEPL "Evangelical-Baptist Church of Georgia", NNLE "Word of Life Church of Georgia", LEPL "Church of Christ", LEPL "Pentecostal Church of Georgia", NNLE "Trans-Caucasus Union of the Seventh-Day Christian-Adventist Church", LEPL "Caucasus Apostolic Administration of Latin Rite Catholics", NNLE "Georgian Muslims Union" and LEPL "Holy Trinity Church" v. the Parliament of Georgia" (constitutional complaint N671) and "LEPL "Evangelical-Baptist Church of Georgia", LEPL "Evangelical Lutheran Church of Georgia", LEPL "The Highest Administration of all Muslims in Georgia", LEPL "The Redeemed Christian Church of God in Georgia" and LEPL "Pentecostal Church of Georgia" v. the Parliament of Georgia" (constitutional complaint N811).

The subject matter of the dispute of abovementioned cases was the constitutionality of the wording of subparagraph “B” of section 2 of article 168 of the Tax Code of Georgia and the paragraph 1 of article 63 of the Law of Georgia “On State Property” with respect to article 14 of the Constitution of Georgia.

Under the disputed provisions construction, restoration and painting of cathedrals and churches commissioned by the Patriarchate of Georgia were exempted from VAT without the right of deduction, as well as the Apostolic Autocephalous Orthodox Church of Georgia was allowed the free-of-charge transfer of the state-owned property.

According to the definition of the Claimant party, the disputed provisions were established above-mentioned privileges only for the Patriarchate of Georgia and for the Apostolic Autocephalous Orthodox Church of Georgia. Therefore, the claimants considered that disputed provisions violated equality before the law protected by article 14 of the Constitution of Georgia.

The respondent emphasised that the Georgian Orthodox Church and the complainant religious organisations represent substantially equal groups, yet the differentiated treatment serves the legitimate purposes of protecting cultural heritage and recognising the outstanding role of the Georgian Apostolic Autocephalous Orthodox Church in accordance with article 9 of the Constitution and the Constitutional Agreement of Georgia.

The Constitutional Court indicated that the main purpose of religious associations is to coordinate religious activities and create all necessary conditions for believers. Aforementioned purposes are equally important for the Patriarchate of Georgia as well as for religious organisations, which represent claimant party. Therefore, comparable persons have an equal interest to gain the state-owned property without charge as well as to create necessary conditions for their religious institutions and services. Since using of tax privilege and the conveyance of the state-owned property without charge is granted only for the Patriarchate of Georgia the Constitutional Court shares the submissions of the parties and considers that disputed provisions establish differential treatment between substantially equal persons based on the ground of religion.

According to the Court’s established practice, in order to assess the lawfulness of differentiation based upon the religious ground enlisted in article 14 of the Constitution the strict scrutiny test is applied. The Court firstly made an assessment of the disputed provisions in compliance with the legitimate aim of protecting cultural heritage. According to the Court, the protection of cultural heritage represents a valid legitimate interest. In this context, due to preserving cultural heritage the state is entitled to establish minimum standards for monument protection and restoration. However, it is insignificant for the realisation of this legitimate aim whoever from these religious

organizations will be allowed to commission works (construction, restoration and painting of churches and cathedrals) so long as other technical requirements are met.

The Court emphasised that the contested regulation is directed not specifically to the VAT exemption of services related to the monuments of cultural heritage, but to the VAT exemption of services under commission by the Patriarchate of Georgia. Consequently, services connected with not only to the monuments of cultural heritage but also other churches and cathedrals without such status may fall within the regulation of the disputed provision. At the same time such kind of services under commission by the other religious organisations (except the Patriarchate of Georgia) are not exempted from VAT. Based on the above mentioned arguments the Court concluded that there is no logical link between the legitimate aim of protecting cultural heritage and differentiated treatment established by the disputed norm and that achieving of this legitimate aim is possible without the differentiated treatment between comparable persons in this case.

The Constitutional Court also assessed whether the disputed provision was a mechanism for enforcing the requirements of article 9 of the Constitution of Georgia. Specifically, the Court assessed whether article 9 of the Constitution of Georgia requires granting privileges to the Apostolic Autocephalous Orthodox Church of Georgia and restriction of article 14 of the Constitution of Georgia in this manner.

According to paragraph 1 of article 9 of the Constitution, “The State shall declare absolute freedom of belief and religion. At the same time, the State shall recognise the outstanding role of the Apostolic Autocephalous Orthodox Church of Georgia in the history of Georgia and its independence from the State”. The Court indicated that the purpose of recognising the outstanding role of Orthodox Church in the history of Georgia is not to represent the predominance of the Orthodox faith with respect to other religions. Considering constitutional provision in question as the basis of entitlement of any kind of privilege would remove the basis of the right to equality and would be incompatible with the requirements of the Constitution of Georgia, including requirements derived from article 7 and paragraph 2 of article 9 of the Constitution.

The recognition of the outstanding role of the Apostolic Autocephalous Orthodox Church of Georgia is associated with its historical contribution, however, the historical contribution cannot be considered as a self-sufficient source of legitimacy of any privilege. Consequently, it should be assessed from the view of the content of relations regulated by the disputed provisions whether abovementioned privileges derive from the historical role of the Orthodox Church.

The Court indicated that the privileges granted to the Orthodox Church by disputed provisions are not derived from any historical circumstances. Specifically, neither granted tax privileges nor

allowance of free-of-charge transfer of state-owned property does not have direct, rational and inevitable correlation with the special role of Apostolic Autocephalous Orthodox Church of Georgia in the history of Georgia.

Having regard to its findings, the Court established that disputed provisions are not in compliance with the requirements of the right to equality recognised by the Constitution of Georgia.

Citizens of Georgia – Zurab Japaridze and Vakhtang Megrelishvili v. the Parliament of Georgia

On 30 July 2018, the First Board of the Constitutional Court of Georgia rendered a judgement in the case “Citizens of Georgia – Zurab Japaridze and Vakhtang Megrelishvili v. the Parliament of Georgia” (constitutional complaint №1282).

The subject of the dispute was the constitutionality of normative content of the wording “or/and consumption without medical prescription” of section 1 of Article 45 of the Administrative Offences Code of Georgia which imposes punishment for consumption of narcotic substance – Marijuana indicated in 92th horizontal cell of the second appendix of the law of Georgia On Narcotic Drugs, Psychotropic Substances And Precursors, and Narcological Assistance, with respect to Article 16 of the Constitution of Georgia.

The complainants argued that the consumption of Marijuana does not threaten public order and can only be detrimental to one’s individual health. It was submitted that an individual should be allowed to consume Marijuana freely and bear the health risks on their own. Thus, applying sanction carries no valuable public interest.

The respondent, the Parliament of Georgia, contended that the disputed provision served the legitimate objective of protecting the well-being of an individual and of the entire society, as well as ensuring the public order. It was further argued by the Parliament that the consumption of marijuana is detrimental to one’s health and there is a need to ensure that the public, particularly adolescents, are protected.

The Constitutional Court emphasised that the consumption of marijuana is protected by the right to free development of one’s personality as guaranteed by Article 16 of the Constitution of Georgia. When assessing the legitimate aim to protect social safety, the Constitutional Court noted that the respondent could not present persuasive information, trustworthy researches, which would demonstrate the existence of an inevitable correlation between consumption of Marijuana and increased number of violent crimes. The respondent party also opined that

marijuana can act as a “gateway drug” leading to addiction to other, stronger narcotic substances. However, The Constitutional Court indicated that neither the respondent nor experts examined at the hearing, presented trustworthy information, incontrovertible researches showing that there is a correlation, or mostly, addiction to hard drugs is caused by Marijuana consumption and not other factors.

The Constitutional Court pointed out that restriction of the consumption of marijuana serves the legitimate aim – protection of health. Assessing the legitimate aims to protect the health, the Court distinguished the dangers to the health of a consumer of Marijuana and to the health of society. Based on the information provided by experts, as well as other relevant materials presented on the hearing, the Court concluded that consumption of Marijuana carries a potential threat to human health. At the same time mentioned danger (which marijuana might cause to its consumers) is lighter compared to the damage caused by consumption of other so-called hard drugs. With the level of damage caused to human health, the consumption of Marijuana is also comparable to legally permitted substances (nicotine, alcohol).

The Constitutional Court noted that a ban on the consumption of Marijuana has an effect on illegal circulation of Marijuana and serves the legitimate goal of protecting the health of society. Nevertheless, the role of an individual consumer in the circulation of marijuana and threats emanating from an individual consumption are very minimal. The Court also emphasized that consumption of Marijuana does not involve risks of distribution, therefore causing the damage to health of others.

Therefore, the Constitutional Court found that mostly due to its blank character the disputed provision caused intense infringement upon the right to free development of personality, compared the minimum level of protection of health. The Court further noted that responsibility on consumption of Marijuana is in line with the Constitution, when under specific circumstances, an individual consumption of Marijuana poses threat to third persons, e.g. in educational facilities, public transport, in presence adolescents etc. The regulations may limit the age to consume and/or the place where it is allowed to make such consumption. Other-wise, the disputed provision prohibited Marijuana consumption in any situation. The Court did not find that the damages were of such gravity as to warrant an absolute ban on consumption.

Based on the above mentioned, since the disputed provision had a blank character, the Constitutional Court of Georgia granted the constitutional complaint and declared the disputed provision unconstitutional.

Citizen of Georgia Titiko Chorgoliani v. the Parliament of Georgia

On 14 December 2018, the First Board of the Constitutional Court of Georgia partially upheld the constitutional complaint №809 (Citizen of Georgia Titiko Chorgoliani v. the Parliament of Georgia).

The Complainant challenged the constitutionality of paragraph 10 of Article 120 of the Criminal Procedure Code of Georgia with respect to Paragraphs 1 (principles of equality of arms and adversarial procedure) and 8 (the right against self-incrimination) of Article 42 of the Constitution of Georgia, as well as, the constitutionality of paragraph 1 of Article 136 of the mentioned Code, with regard to the Paragraph 1 of the Article 42 of the Constitution of Georgia.

According to Paragraph 10 of Article 120 of the Criminal Procedure Code of Georgia, the prosecution had the right to primary examination of an object containing information seized upon motion of the defence. The Complainant argued that, in criminal proceedings, obtaining evidence to support one's position was a prerogative of the parties. Under the disputed provision, the defendant was obliged to hand over evidence obtained on the basis of defendant's motion to prosecution. Hence, the disputed provision violated the adversarial principle, equality of arms and the right against self-incrimination.

The respondent, the Parliament of Georgia emphasised that the disputed provision served to ensure authenticity and credibility of evidence in criminal proceedings, guaranteed comprehensive and effective investigation, and protected relevant evidence from the damage and destruction. The respondent explained, that after the primary examination of an object, the defendant had the possibility to examine obtained evidence on their own. Therefore, the disputed provision satisfied the constitutional requirements.

According to the Constitutional Court of Georgia, the sole fact that one party to criminal proceedings has a temporal advantage of examining the evidence, may not entail the restriction of the constitutional right, if later, at the reasonable stage of criminal proceedings, the same possibility is presented to the other party.

The Constitutional Court of Georgia defined that, under the right to primary examination, the prosecution had the right to conduct a comprehensive examination of an object obtained by the motion of the defendant, carry out the relevant expert examination, and other necessary actions. According to the analysis of the Criminal Procedure Code, the disputed provision created a risk that prosecution could prolong the examination of evidence, delay the transfer of evidence to the defendant for an unreasonable period or withhold the object of examination. In such circumstances, the defendant lacked the opportunity to influence the prosecution with the interference of a judge or using other procedural mechanisms, and as a result acquire the object, obtained by her/his motion. The Constitutional Court also indicated that some objects might be examined only once (as it can be the subject to exhaustion, destruction, etc.). In this regard, when

the primary examination is conducted by the prosecution and it has the opportunity to conduct an expert examination of the evidence, the defense party is objectively deprived of the opportunity to examine the evidence obtained by his/her motion, to get the information from it, and to use it as a proof in criminal procedures. In such circumstance, the defendant fully depends on the results of the examination conducted by the procedural opponent, and the prosecution is privileged to conduct primary examination each time.

In view of the above-mentioned, the Constitutional Court considered the disputed provision as a restriction of equality of arms and the adversarial principle, because it did not provide any procedural mechanism that would protect the defendant from not receiving or delayed receipt of evidence. Furthermore, the disputed provision included a risk, that the opportunity of examining the evidence, suitable only for one-time examination, would only be given to the prosecution, without the proper examination by the defence party.

Constitutional Court considered that the disputed provision served to achieve such important legitimate aims as the authenticity of evidence in criminal proceedings, ensuring its credibility, ensuring effective and comprehensive conduct of investigative functions of investigation bodies, and protection of key evidence from destruction and damage. Despite this, the legislator could have established a different, less restrictive measure within which a reasonable balance between the parties would have been protected and the legitimate aims would have been achieved effectively.

The Constitutional Court noted that a regime that guaranteed timely access to evidence by the defendant, the opportunity of filing a motion on obtaining an object from the prosecution would be less restrictive towards the equality of the arms and the adversarial principle. At the same time, the opportunity of joint or any other way of examination of the evidence subject to exhaustion/destruction would have provided the opportunity to the defendant of proper examination of evidence.

In view of the above-mentioned, the Constitutional Court ruled that the disputed provision violated the equality of arms and the adversarial principle, and, therefore, contradicted the requirements of paragraph 1 of the Article 42 of the Constitution of Georgia.

The Constitutional Court noted that the disputed provision defined the legal outcomes regarding a motion filed by the defence party, under the free expression of will, while the right against self-incrimination prohibits the influence on a person's will, in any way, in order to obtain a self-incriminatory confession. The disputed provision did not imply any kind of influence upon the free will of a defendant, and for conducting investigative actions or seizure of an object defendant filed a motion and applied to the court in their own decision. Therefore, the

Constitutional Court of Georgia ruled that the disputed provision did not restrict paragraph 8 (the right against self-incrimination) of Article 42 of the Constitution of Georgia.

The complainant also questioned the constitutionality of paragraph 1 of Article 136 of the Criminal Procedure Code Georgia with respect to paragraph 1 of Article 42 the Constitution of Georgia. Since the disputed content of paragraph 1 of the Article 136 of the Criminal Procedure Code was already declared unconstitutional in the case of “Citizens of Georgia – Nadia Khurtsidze and Dimitri Lomidze v. the Parliament of Georgia” (№1/1/650,699 judgement), the Constitutional Court of Georgia terminated the case in relation with the mentioned part.

1.3.3. The Second Board

Citizens of Georgia – Gucha Kvaratskhelia, Givi Tsintsadze, Giorgi Tavadze, Elizbar Javelidze and others (17 complainants) v. the Parliament of Georgia

On 22 February 2018, the Second Board of the Constitutional Court of Georgia delivered the judgement “Citizens of Georgia – Gucha Kvaratskhelia, Givi Tsintsadze, Giorgi Tavadze, Elizbar Javelidze and others (17 complainants in total) v. the Parliament of Georgia” (constitutional complaint N863), where the subject of the dispute was the constitutionality of article 5.4 of the law of Georgia on “Georgian National Academy of Sciences” with respect to article 14 of the Constitution of Georgia. According to the disputed norm, a person aged more than 70 years old could not have held an administrative position of the Academy, namely the office of the President and the Vice-President of the Academy.

The complainants indicated that the disputed provision had restricted psychologically and mentally healthy persons above 70 years with full legal capacity the right to hold administrative positions of the Academy based on age. According to the claimants, despite the age difference, academicians both above and under 70 years, were substantially equal and the differential treatment between them had no objective justification. Therefore, the regulation was discriminatory and in violation of equality before the law enshrined in the Constitution of Georgia.

According to the respondent, establishing age limits, in general, does not violate equality before the law. The legitimate aim for the restriction provided by the disputed norm was to promote the effectiveness and unhindered functioning of the activity of the Academy. Even a healthy person above 70 years might not be able to handle the features of administrative-governing activities and the necessary physical requirements for it.

At the same time, by the position of the Parliament, the administrative positions of the Academy could only be held by the persons holding the Academic status. The number of academics was limited by the legislature and in fact, the age of the majority of academics was above 70. Hence, it was likely for the Academy not to be able to elect the person on the respective position. For these arguments, the Respondent admitted the constitutional claim.

By the legislature applicable at the time admitting the complaint by the Respondent does not lead to termination of the case. Therefore, the Constitutional Court considered the constitutionality of the disputed provision in spite of admitting the claim.

The Constitutional Court considered that with respect to holding an administrative position of the Academy, academics under and above 70 years was substantially equal and the disputed norm had established differential treatment based on their age. The Court also held that the differentiation was not based on any ground indicated in article 14 of the Constitution of Georgia and the intensity of interference was not high. Therefore, the Court used the rational differentiation test for considering the constitutionality of the differentiation.

The Constitutional Court emphasised that in general, it might be allowed to impose different qualification requirements upon servants for the effective functioning of an establishment. But it is also important for the age restriction to be in logical and rational correlation with the intended aim. Although, diminishing certain skills is the subsequent result of getting older, is not sufficient to a priori justify every age restriction.

The Constitutional Court set the two-step test for assessing the rationality of age restriction. Namely, for the age restriction to be justified the lawmaker must show that, due to the nature of the duties assigned, as a rule, a majority of people reaching certain age cannot handle to appropriately perform these duties. It is necessary to be reasoned that in the majority of cases, reaching the indicated age leads to the diminishment of the skills necessary for handling certain activities. At the same time, imposing a blank restriction will be irrational if the decision about the compatibility with the position can be evaluated based on the individual assessment of a person's skills.

The Constitutional Court assessed the duties and the responsibilities imposed on the positions indicated in the disputed norm and held that implementation of the aims of the Academy and the functions of academics as well, is not connected to any kind of special physical activity. It was also clear from the hearing on the merits, that holding administrative positions of the Academy did not require such energy that is impossible for academics to hold. Therefore, the Court ruled that there was no indication for people above 70 holding administrative positions of the Academy to not be able to fulfil their duties because of the age.

The Constitutional Court also outlined that there were only a few current academics whose age was under 70 and their number is decreasing as the time goes by. Therefore, it is possible that the group of persons who can be elected on the positions at hand will disappear in the future because of the disputed norm. Considering these merits, the disputed provision not only fails to reach the intended aim but in fact, at a certain stage it may cause difficulties and make it impossible for the academic positions of the Academy to be taken by academics.

Based on these merits, the Constitutional Court of Georgia granted the constitutional complaint and found unconstitutional article 5.4 of the law of Georgia on “Georgian National Academy of Sciences”.

Citizen of Georgia Avtandil Katamadze v. the Government of Georgia

On 22 February 2018, the Second Board of the Constitutional Court of Georgia delivered a judgement in the case: “Citizen of Georgia Avtandil Katamadze v. the Government of Georgia” (Constitutional Complaint №743). The disputed norm in the case was the regulation of the Resolution of the Government of Georgia №45 of 1 March 2013 that determined the list of the persons entitled to compensation for the damage caused by the infliction of harm to health during the implementation of the occupational duty. The disputed regulation stipulated that only the persons working for the enterprises established and liquidated with 100% of state share were entitled to the above-mentioned compensation.²⁵

According to the complainant, the disputed regulation constituted an unequal treatment between substantially equal persons and therefore, it contradicted with the right to equality guaranteed by Article 14 of the Constitution of Georgia. In particular, the disputed regulation was not referring to the individuals employed at the enterprises established with 100% of state shares in which later, after reregistration of the enterprise, state shares had decreased to below 100%. The complainant argued that the disputed regulation gave rise to the problem of constitutionality, as it established the differentiation between the comparator groups of persons based on the percentage of state shares at the moment of liquidation of the enterprise.

After considering the case on merits the complainant specified the claim. As he indicated, he was requiring abolishing not of the whole disputed provision, but the wording: “with 100% of state share”, which would automatically establish a new order where employees of the enterprises

²⁵The subject of the dispute fully: constitutionality with regard to article 14 of the Constitution of Georgia of paragraph 1 of article 5 of the Annex №1 determining “the procedure for setting and issuing of benefit for the employee in respect of the damage caused by infliction of harm to health during performing his/her occupational duty” approved by the Resolution №45 of the Government of Georgia dated March 1, 2013 “on approving the procedure for setting and issuing of benefit for the employee in respect of the damage caused by infliction of harm to health during implementing of his/her occupational duty.”

with less than 100% of state shares at the moment of its liquidation would be also entitled to receive the envisaged benefit.

The Constitutional Court of Georgia ruled that there was a differentiation between substantially equal persons with regard to the enterprise they were employed at and the volume of the shareholding percentage of state at the moment of the liquidation of this enterprise. The Constitutional Court of Georgia noted that in connection with the legal relationship regulated by the impugned provision, the percentage of the state shares in the enterprise could not be a ground for considering that comparator groups were substantially unequal, as they had the same interest and necessity of receiving benefits in case of suffering from occupational injury or damage caused by infliction of harm to health during performing their occupational duty.

According to the Constitutional Court of Georgia, after specifying his claim the complainant was demanding modification of the disputed provision and broadening of its content in a way that the persons in the similar situation as the complainant would be able to receive the above-mentioned benefits. Therefore, the claimant party was requiring unconstitutionally not of the whole disputed provision, but only the normative content, which excluded him from receiving the state benefit.

The Constitutional Court interpreted that the disputed provision established the grounds for receiving benefits, for employees of the enterprises created and liquidated with 100% of state share. Therefore, the following regulation did not exclude the possibilities of granting the same benefits to other individuals, such as the complainant. Consequently, the abolition of any of the part of the challenged provision would not entitle individuals, like the complainant to the discussed compensation. Thus, the requirement of the complainant in this particular case was not to abolish any content of the disputed regulation but to create a new normative order by removal of the specific words from it.

The Constitutional Court declared that based on the well-established practice modification of the content of the disputed provision as well as the broadening of the list of potential beneficiaries is beyond the competence of the Constitutional Court. The Constitutional Court of Georgia, as a negative legislator, is entitled to abolish unconstitutional norm entirely and/or partially. However, it is not authorized to form a new legal order or to adopt new regulations as it would be considered as overlapping with the competence of other state institutions, which is in contradiction with the constitutional principle of separation of powers.

According to all the above mentioned, the Constitutional Court of Georgia ruled that on the one hand, disputed provision did not exclude the opportunities of granting the complainant the state benefits, and, on the other hand, the Constitutional Court of Georgia is not entitled to approve the claim of the complainant by adopting anew normative order, therefore, constitutional complaint №743 was not uphold.

Citizen of Georgia Tamar tandashvili v. the Government of Georgia

On 11 May 2018 the Second Board of the Constitutional Court of Georgia granted the constitutional complaint of the citizen of Georgia, Tamar Tandashvili, and declared unconstitutional a rule of the Decree of the Government of Georgia (№126 originally adopted on 24.04.2010), which aims at establishing a centralised registry for the socially vulnerable families, who would then be eligible for state-provided social assistance. The disputed provision excluded those persons from registration, who were in unlawful possession of the premises owned by the state without permission of the owner.

The complainant argued that those individuals who lived in the property owned by the state without permission and were entitled by law to the registration (before the disputed legal provision took effect on 1 June 2013) as a socially vulnerable family, were effectively stripped of the possibility to receive state-provided social assistance. By contrast, such assistance was provided to those people, who unlawfully occupied the state-owned premises, yet managed to undergo registration before the contested law was introduced. Based on this argument, the complainant declared that it was subject to a differentiated treatment contrary to the constitutional right to equality (Article 14).

The complainant further noted that as a result of the disputed law, it had to make a difficult decision between their housing and the right to receive social assistance. Therefore, according to the complainant's position, the disputed law was also in contradiction with the right to dignity (Article 17.1) since it employed the people as the means of achieving the state's regulatory aim.

The respondent, the Government of Georgia, emphasised that the law in question pursued the important legitimate objective to ensure the protection of state property, and it provided for a proportionate measure in line with the constitutional requirement. To justify the differential treatment, the respondent noted that cancelling the registration of already registered persons would cause difficult economic consequences for them.

The Constitutional Court sided with the complainant's arguments and indicated that for the purposes of the state-provided social assistance, those persons who lived in the state-owned property without permission, irrespective of the fact when they were entitled to obtain the status of a socially vulnerable family and undergo registration, were substantially equal. The constitutional court also pointed out that there was a differential treatment between comparable persons.

According to the court, in the instant case taking into consideration that one part of the comparable persons could not get social assistance at all, disputed provision interfered with the right at a high intensity, therefore differentiation should be assessed by the strict scrutiny test.

The Constitutional Court stated that differential treatment could be somehow reasonable if it was linked to the date of arbitrary possession of state property, but the disputed regulation differentiated comparable persons by the date of their registration in the social database. Therefore, the measure was not considered suitable to achieve a legitimate aim. Besides, rejecting claimant's demand for registration in the database should be considered as painful as cancelling the registration for those who were registered before. In conclusion, the court stated that the disputed law unjustifiably restricted the rights of the complainant (and persons with similar status). The Constitutional Court found the foregoing differentiation between the two equal groups of individuals unconstitutional, in violation of the constitutional right to equality.

The Constitutional Court further noted that the state does enjoy the legitimate interest to ensure the protection of their property from unlawful possession. Nevertheless, any measure employed in the course of attaining the mentioned objective must be in line with the constitutional rights and freedoms. The Court indicated that in the present case, to ensure the protection of their property, the state effectively resorted to deprive the complainant (and persons with similar status) of their right to receive social assistance. Hence, the economic hardship of individuals was, in fact, the very measure employed in the given case to achieve the legitimate objective of protecting the state property from unlawful possession. The court concluded that using humans as a mean for achieving the aim violates the right to human dignity.

Ltd “Coca-Cola Bottlers Georgia”, Ltd “Castel Georgia”, Jsc “Healthy Water” v. the Parliament of Georgia and the Minister of Finance of Georgia

On 27 July 2018, Second Board of the Constitutional Court of Georgia handed down the judgement on the case of “the “Ltd Coca-Cola Bottlers Georgia”, “Ltd Castel Georgia” „Jsc Healthy Water” v. “The Parliament of Georgia and the Minister of Finance of Georgia”” (constitutional complaint N700).

The complainants challenged the constitutionality of article 192¹ of the Tax Code of Georgia and paragraphs 78^{1.1}, 78^{1.2}, 78^{1.4}, 78^{1.8} of the instructions “on Tax Administration” approved by the order N996 Minister of Finance of Georgia on 31 September 2010. According to the complaint, designated provisions contradicted the requirements of the paragraphs 21.1 and 21.2 (right to property) and the first sentence of the paragraph 30.2 (right to free enterprise) of the Constitution of Georgia.

Article 1921 of the Tax Code established legislative grounds for the mandatory marking of non-excisable goods and empowered the Minister of Finance of Georgia to compile a list of goods subject to mandatory marking and define the terms of the marking. Disputed provisions of the order of Minister of Finance declared non-alcoholic drinks, including mineral and still waters as goods subject to mandatory marking. In addition, the provisions regulated other issues related to the marking procedure.

The complainants argued that disputed norms obligated them to allow marking service provider company selected by the Revenue Service of Georgia in their bottling plants in order to install marking devices on applicant's bottling hardware. Complainants stated that marking devices were performing with multiple failures that were disrupting the industrial process and the generated electronic data did not reflect the actually produced goods with proper accuracy. Moreover, applicants indicated that their obligation to cover the marking expenses constituted an extreme financial burden on non-alcoholic drink industry. Applicants questioned the compliance of the disputed provisions with the formal requirements of article 21 of the Constitution of Georgia as the Parliament of Georgia delegated unlimited power to regulate mandatory marking of non-excisable goods.

The respondent party disagreed with applicants opinions. Representatives of the Parliament of Georgia and Ministry of Finance of Georgia asserted that disputed provisions served as valuable legitimate aims of proper tax administration and protection of consumer's rights. The respondents argued that disputed provisions were in compliance with the formal and material requirements of the Constitution of Georgia.

Initially, the Constitutional Court differentiated between the right to property and right to free enterprise. The financial burden accompanied to mandatory marking was considered in the context of the right to property whereas claims regarding disruption industrial process examined under the right to free enterprise.

The Constitutional Court indicated that Article 21 of the Constitution does not require all property right related issues to be regulated exclusively by primary legislation. The Court interpreted that the Parliament is entitled to delegate regulatory power to secondary legislation if it is not directly prohibited by the Constitution and/or such delegation is not a refusal of the Parliament to carry out its own exclusive powers. The Constitutional Court ascertained that issues related to mandatory marking are not subject to high importance. Therefore, the parliament's decision to transmit the regulatory power of mandatory marking procedure to the Minister of Finance does not contradict the formal requirements of the Constitution.

The Constitutional Court applied the principle of proportionality to assess the constitutionality of the disputed provisions. The Court shared the respondent's opinion and recognised that the

disputed norms serve as valuable legitimate aims of proper tax administration and protection of consumer's rights. According to the judgement, the legislator is entitled to interfere in the right to property while pursuing the designated legitimate aims if further requirements of proportionality are followed.

Firstly, the Constitutional Court considered the independent expert opinion attached to the constitutional complaint. Applicant used mentioned opinion, as an evidence to prove that the installed marking devices were functioning with failures and generated data was not beneficial for tax administration. The Court emphasised that according to the opinion, data generated by the devices was precise by 99.48%. Moreover, the court indicated that independent expert opinion does not answer the question of whether the marking devices caused the error or not. The Constitutional Court pointed out that, problems of technical implementation could result in the unconstitutionality of the disputed normative requirements if the law is the basis for existing such technical problems and/or proper technical implementation of the solution required by the law is impossible. Due to absence of designated criteria, the Constitutional Court noted that mandatory marking stipulated by the disputed provision serves as a valuable tool for tax administration.

The complainants argued that the same legitimate goal could be achieved with the same effectiveness by other cost-efficient solutions. As an alternative solution, applicants' designated constant video surveillance and data generated by their own bottling hardware. The Constitutional Court noted that considering the dynamics of the bottling process, video surveillance could not be a reliable source for generating valuable data for tax administration. In addition, the Court emphasised that one essence of the disputed provisions were effective external control of non-alcoholic drink business industry and only the data generated by the company owned/controlled hardware is not beneficiary for the idea laid behind the mandatory marking. Moreover, the Constitutional Court underlined that marking procedure includes the establishment of a central electronic database where records regarding individualities of the products, companies and other data are automatically transferred upon marking. The database enables automatic reporting by reading the individual matrix on the bottle. The Court remarked that complainants could not prove that functioning of such advanced database is technically possible under their suggested alternatives in a cost-efficient way. Therefore, the Constitutional Court ascertained that mandatory marking procedure is a beneficiary/admissible and essential instrument for proper tax administration.

The Constitutional Court emphasised the financial burden on the companies stemming from the mandatory marking. The Court noted that, in general, the government is entitled to oblige taxpayers to exercise actions which are necessary for tax administration and protecting the consumers' rights. Since tax regulations usually result in expenses of the taxpayers/companies and such financial burden is inevitably justified by the major legitimate interests of the state.

The Constitutional Court indicated that nominal value of marking is an expense for tax administration where the marking process is not exercised by the taxpayer itself. The Court referred that the overall expense of such financial burden is not enough to determine unconstitutionality of the disputed provisions. Applicants shall prove that financial burden has a major negative impact on business and damage the respective industry itself to a great extent. The complainants shall represent that the burden is not an ordinary unpleasant regulation for the business but an intensive measure that is incompatible with the free market. The court ascertained that such evidence was not presented in the case.

In connection with the right to free enterprise, the Constitutional Court examined arguments regarding the disruption industrial process. The Court underlined that when parties to the constitutional litigation indicate facts as grounds for the unconstitutionality of normative regulation they are expected to represent reliable and relevant evidence to support their arguments. There was no evidence indicating that installed marking devices disrupted industrial process beyond the ordinary, expected level.

Therefore, the Constitutional Court considered the disputed provisions in compliance with the right to property and the right to free enterprise recognised by the Constitution of Georgia.

Citizen of Georgia Nana Parchukashvili v. the Minister of Corrections of Georgia

On 26 July 26 2018, the Second Board of the Constitutional Court of Georgia rendered a judgement on the case №665/683 and partially upheld the constitutional complaint of a citizen of Georgia, Nana Parchukashvili.

According to the disputed provision, in cases of strip searches, any accused or convicted person was obliged to fully or partially remove his/her clothing. The procedure was performed when leaving or entering jail or solitary confinement and in other cases, if a director or authorised officials decide to use that measure.

The complainant argued that undressing a person in front of a stranger, causes humiliation and abuse of human, thereby such kind of measure should be used only in extremely exceptional circumstances. The petitioner mentioned those forbidden things could be discovered by a scanner, so there was no necessity to use such a strict measure permanently. At the same time, the contested norm had a blanket character as persons arrested for minor offenses were also subjected to strip searches. The complainant also pointed out that the director of the penitentiary facility possessed too broad discretionary power and legislation was ineffective to prevent unnecessary and arbitrary searches. Therefore, the disputed provision was in violation of Articles 17.2 (prohibition of inhuman and degrading treatment and punishment), 16 (everyone's freedom to develop their own personality) and 20.2 (right to respect for private life) of the Constitution of Georgia.

The respondent emphasised that that legitimate aim of the disputed provision was to preserve safety in prison, prevent the commission of criminal and unlawful acts, and protect life and health, also other's rights and liberties. The respondent noted that a scanner could not be considered as an alternative measure, as there are substances that can't be discovered by a scanner.

The constitutional court stated that undressing a person for checking purposes does not a priori constitutes a violation of article 17 of the Constitution of Georgia. But this measure should only be used in utterly exceptional conditions and in such a manner that will not cause inhuman and degrading treatment. The court emphasised that the disputed norms were suitable to achieve above mentioned legitimate aims and also the measure was necessary to achieve that aim. During the proceedings, it was revealed that some forbidden substances (such as horsehair and paper), or inscriptions cannot be discovered by a scanner.

The Court declined the complainant's claim that persons arrested for minor offenses should not be subjected to strip searches and noted that danger of entering forbidden substances into jail comes from any prisoner regardless of the seriousness of the crime he/she committed. Therefore,

the requirement of strip searches in cases of solitary confinement or contacting outside world was constitutional.

The Constitutional Court noted that order №200 did not include clear guidelines for a director's discretionary power in the context of using disputed measure; thereby there was a high probability of arbitrary interference in constitutional rights. As a result, the disputed norm was declared unconstitutional with respect to article 17.2 of the Constitution of Georgia. But taking into consideration that order №116 did contain such guarantees, it was not in violation of the constitutional right to the prohibition of inhuman and degrading treatment and punishment.

The Court interpreted the formal requirement of article 20.2 of the Constitution of Georgia according to which any interference in the right to respect for private life would be justified if there is a court decision or urgent necessity provided for by law. The court stated that the purpose of the above mentioned formal requirement is to control the discretionary power of the executive government. In cases of specific legal relationships, where it is always necessary to interfere in the right of private life, above mentioned formal requirement is not relevant anymore.

It was concluded that in penitentiary facilities there is a permanent necessity to interfere in the right of private life in the defined circumstances of the instant case. Therefore, there was no need to satisfy the formal requirement every time the disputed measure is used. At the same time, the fact that the formal requirement of Article 20 of the Constitution of Georgia is not applicable in some specific relationships, does not mean that constitutionality of those provisions will not be assessed on merits.

Citizens of Georgia – Marine Mizandari, Giorgi Chitidze and Ana Jikuridze v. the Parliament of Georgia

On 27 July 2018, the Second Board of the Constitutional Court of Georgia partially upheld the constitutional complaint of citizens of Georgia and declared unconstitutional the regulation set out in article 30.8 of the "Law of Georgia on Cultural Heritage". The disputed provision excluded from governmental control cultural heritage objects owned that were under the ownership of religious organisations. In particular, the state organs had no authority to impose responsibility upon the religious confessions in case of their failure to take care of those cultural objects that were under their ownership (enjoyment), as well as state authorities could not take necessary measures to protect objects, without the consent of their owner.

The complainants argued that the state violated its positive obligation to protect cultural heritage, according to article 34.2 of the Constitution of Georgia. At the same time, the disputed provision was in violation of the right to equality (Article 14 of the Constitution of Georgia) as it exempted

from the duty of care requirements only religious organisations, whereas all the other owners of the cultural heritage objects were subject to legal responsibility in case they did not fulfill their obligations properly.

The respondent, the Parliament of Georgia, emphasised that the extension of the state's monument conservation regime to religious organisations would have seriously restricted their right to freely profess their belief, as owners of the cultural heritage objects that are used for religious purposes, would not be able to fully enjoy by using those objects for religious rituals. Therefore, the legitimate aim of the contested regulation was to ensure the free exercise of freedom of religion.

The Court noted that facilitating the realisation of the freedom of religion represents a valid legitimate interest and as religious organisations are able to use cultural heritage objects for religious purposes without restrictions, the measure is suitable to achieve the aim.

Assessing the necessity of the measure to achieve the legitimate aim, the court indicated that the disputed provision excluded state control of cultural heritage objects in all circumstances without taking into account whether the necessary measures to protect cultural heritage interrupt the realisation of religious rituals or not. At the same time, the contested law applied to all kinds of cultural heritage objects regardless of whether they were used for religious rituals. Consequently, the provision was considered problematic due to its blanket nature and it constituted an unnecessary measure in relation to the proclaimed legitimate objective. Therefore, the Constitutional Court found the disputed norm to be in violation of article 34.2 of the Constitution of Georgia.

Additionally, the Court concluded that in order to promote the realisation of religious freedom, the legislative branch may enact narrowly tailored regulation, but at the same time, above mentioned measure should be reasonable, considering the competing interests of different legitimate aims at hand.

Assessing the constitutionality of disputed regulation with respect to article 14 of the Constitution of Georgia (the right to equality) the Court emphasised that while establishing legal responsibility for an act, it should be taken into consideration whether the committed act is motivated by religious beliefs, in order to determine if comparable persons are substantially equal. In the instant case, the disputed regulation was found not to be narrowly framed to religiously motivated acts, therefore, comparable persons were substantially equal.

Since ground for differentiation is not one of those indicated in article 14 of the Constitution, also, the disputed provision does not interfere with the right at a high intensity, the Court assessed differential treatment by the rational differentiation test. The Constitutional Court noted

that the blanket character of the disputed provision not only violates requirements of proportionality, but it is also unreasonable by its nature and does not satisfy the criteria of the rational differentiation test. Therefore, the contested regulation was found unconstitutional with respect to article 14 of the Constitution of Georgia.

Citizen of Georgia Davit Malania v. the Parliament of Georgia

On 19 October 2018, the Constitutional Court of Georgia delivered a judgement in the case of “Citizen of Georgia Davit Malania v. the Parliament of Georgia” (constitutional complaint №779). According to the disputed provisions, the order of the court of the first instance issued in certain administrative proceedings was final and it could not be appealed.²⁶

The complainant stated that the right to apply to the Court of Appeals is protected by the Constitution of Georgia and the prohibition prescribed by the disputed provisions violated the right to a fair trial. According to the position of the Complainant, imposing a large fine and a long-term suspension of a driving license as a form of administrative penalty should be subject of an appeal to both, the first instance and appellate courts. The complainant indicated that the dispute over the minimum amounts/duration of the mentioned administrative penalties could be concluded in the court of the first instance, although the provision was blanket and applicable to all disputes, hence violated the right to a fair trial.

The respondent explained that the right to a fair trial guaranteed by the Constitution of Georgia does not require a case to be examined by the courts of three instances in every case. The respondent agreed that in the present case the right to a fair trial was restricted, however, it was justified to achieve legitimate aims of fast and effective justice and ensured the principle of judicial economy.

The Constitutional Court noted that the disputed provisions, in fact, served the achievement of the valuable legitimate aims, such as cost-effective litigation and prevention of the judicial overload. Moreover, limiting access to the court of appeals reduced the number of cases to be heard in appellate courts. Hence, the measure provided in the disputed provision was a reasonable mean for achieving the legitimate aim of the prevention of the overloading of the courts. At the same time, there was no alternative, less-restrictive legal mechanism, which would prevent the court from overloading with the same effectiveness.

²⁶ The subject of the dispute fully: Constitutionality with regard to Article 42(1) of the Constitution of Georgia of the words of Article 271 (2), “Except as provided for by Article 272 of this Code”, words of the first sentence of Article 272 (1)(a), the decision of which shall be final”, words of the second sentence of Article 272 (1)(a), “the decision of which shall be final”, words of Article 272 (1)(c), “the decision of which shall be final” and words of Article 272 (1)(d), “the decision of which shall be final” of the Administrative Offences Code of Georgia.

In assessing the proportionality of the restriction, the Court saw the legitimate aim of the prevention of overloading of the court and person's right to appeal against the court's decision to the Appellate Court as conflicting interests. According to the interpretation of the Constitutional Court, the prevention of overloading of the court is directly related to the functionality of justice. In view of this, the right to appeal the decision of the court of the first instance, cannot automatically outweigh the crucial interest of prevention of judicial overload in every case. The Constitutional Court declared that the restriction to apply to the appellate court violates the right of a person if he/she, stemming from the particular dispute, has the special interest of appealing the court decision.

The Constitutional Court pointed out that in the present case the interest of a person to appeal was induced by gravity of the alleged offence. In the determination of gravity of the offence, the Court applied the penalty severity criterion for this particular offence. According to the Court's interpretation, the severity of the penalty does not solely determine the impact on the alleged offender after the conviction. Apart from penalties (including cases, when penalties are not applied at all), finding a person guilty leads to his/her reprimand, which is also a form of impact. Therefore, according to the established approach of the Court, the interest to dispute the norms, which prescribe a liability, is determined not only by the extent of the sanction applied to the person in the case but the gravity of the offence allegedly committed.

According to the Constitutional Court, neither in the constitutional complaint nor during the oral hearing of the case, had the complainant indicated the specific administrative offences with respect to which he required the review of the constitutionality of the disputed provisions. Hence, within the scope of this case, the Constitutional Court found it impossible to assess the severity of all administrative offences and constitutionality of the restriction to a right to appeal for each one of them. The Constitutional Court ruled that the cases where the sanction itself indicated the severity of the offence and, thus, demanded the verification of legality by appeal should be reviewed nonetheless.

The Constitutional Court asserted that, as a rule, deprivation of liberty as a form of penalty indicates the grave nature of the offence. Accordingly, there was an increased interest to appeal against the court decisions in cases where administrative detention was envisaged. The disputed provisions also excluded the possibility of arguing in a court of appeal in cases of administrative offences for which administrative detention was envisaged, along with other sanctions. According to the Constitutional Court, in such circumstances, the person should be granted the right to apply to the Appellate Court, whether or not he/she was actually detained. Thus, the disputed provision which excluded the possibility of applying to the Appellate Court in such cases was declared unconstitutional with respect to Article 42 (1) of the Constitution of Georgia.

The constitutional complaint N779 also challenged the constitutionality of the norm which precluded right to appeal decree of the authority (an official) of the internal affairs on replacing an administrative penalty with another administrative penalty. The Court noted that in the proceedings of replacement of an administrative penalty, a person is not declared guilty, the commission of the offence had already been established and the right to appeal had been realised during the imposition of the initial sanction. Accordingly, the Constitutional Court indicated that the constitutional standard of providing access to the courts of two instances in cases of grave offences, even if a relatively less severe sanction is imposed, is not relevant to the cases of replacing administrative penalties.

The Constitutional Court did neither uphold the claim of the complainants regarding the unconstitutionality of the disputed provisions, which excluded the right to appeal a decree of the authority of the internal affairs on the imposition of an overdue fine. According to the interpretation of the Constitutional Court, the existence of the punitive damages itself does not point to the gravity of the offence and the imposition of an overdue fine is not relevant.

The Constitutional Court also pointed out that one of the objectives of the right to appeal the court decision is to establish the uniform practices and to ensure legal security. Accordingly, the proscription of appeal when the same instance courts interpret the norms differently equals to the rejection of one of the most important functions of the appellation mechanism. A person should be aware of what the law requires from him with sufficient clarity, especially if the law limits his/her freedom of action and imposes responsibility. Thus, the Constitutional Court considered unconstitutional the restriction of the right to appeal in cases where there are no uniform court practices, regardless of the type of administrative offence.

Furthermore, the Constitutional Court clarified that in case of immediate invalidation of the disputed provisions the restriction to apply to an appellate court would be completely abolished, which might have created a significant overload in appellate courts. Therefore, the Constitutional Court postponed the enforcement of its judgement until 31 March 2019.

Citizen of Georgia Davit Dzotsenidze vs. the Parliament of Georgia

On 7 December 2018, the Constitutional Court of Georgia granted the complaint N765 of a Georgian citizen, Davit Dzotsenidze against the Parliament of Georgia. The complainant challenged the constitutionality of a) first sentence of Article 429, first sentence of section 1 of Article 430, section 3 of Article 430 and Article 431 of the Civil Procedure Code with respect to Article 42(1) of the Constitution of Georgia; b) the first sentence of Article 429 and first sentence of section 1 of Article 430 of the Civil Procedure Code with respect to Article 42(3) of the Constitution of Georgia.

The complainant argued that according to the disputed provisions of the Civil Procedure Code, a final judgement could be reversed and the proceedings could be reopened based on an action for a retrial due to newly discovered circumstances at the court session without an oral hearing. It was submitted that without being able to participate in the court proceedings concerning the issue of admissibility as well as substantial hearing, the disputed provisions of the Civil Procedure Code violated the complainant's right to a fair trial.

The complainant further questioned the constitutionality of the disputed provisions, according to which a final court judgement, disputed by the litigant in a given civil case, was fully reversed and the consideration started anew if the action for a retrial was well-founded. The complainant noted that such action should have led to reversing the judgement partially, in limits of the newly discovered circumstances and not its full abolishment. Otherwise, the disputed provisions gave parties the opportunity to submit new, different evidence, which violated the adversarial principle.

The respondent, the Parliament of Georgia, emphasised that the Civil Procedure Code granted a judge certain discretionary authority to decide on the necessity of an oral hearing based on the circumstances of the particular action for retrial. The respondent also clarified that full reversal of a final judgement and reopening proceedings based on newly discovered circumstances served the principle of substantive fairness.

Firstly, based on the analysis of the case-law of the Supreme Court of Georgia, the Constitutional Court established that the authority of a court to decide on the admissibility of the action for retrial due to newly discovered circumstances without oral hearing was not established by the disputed provision (First sentence of Article 429 of the Civil Procedure Code) but by Article 425 of the Civil Procedure Code and general provisions regulating a case hearing by a court of particular instance. These provisions were not the subject of the dispute of the constitutional complaint, therefore, this part of the complaint was not granted since the disputed provision did not have the challenged normative content.

Secondly, the Constitutional Court noted that the disputed provisions, according to which a final judgement could be reversed and proceedings could be reopened based on the action for retrial due to newly discovered circumstances at the court session without an oral hearing interfered with the complainant's rights to a fair trial (Article 42 (1)) and of defence (42(3) of the Constitution of Georgia). Yet, the Constitutional Court emphasised that above mentioned rights are not absolute and can be restricted in order to achieve such legitimate aim as ensuring swift and efficient justice.

According to the Constitutional Court, deciding a case without conducting an oral hearing undoubtedly requires less time, human and financial resources and can be a proper mean to achieve above mentioned legitimate aim. Moreover, no other, less restrictive measure could be identified in this case. Yet, the Constitutional Court noted that the full retrial due to newly discovered circumstances was problematic for the complainant only when a party became aware of such circumstances and evidence which would have resulted in a decision more favourable to that party if they had been previously submitted to the court. According to the Constitutional Court, such retrial intrinsically involves a reassessment of established facts and identification of new evidence in the case, while a final judgement has important legal consequences and the party who won the case has the legitimate expectation for its effective enforcement. It is obvious that the retrial can significantly affect individual rights of the litigant in a given case since if being well-founded the action for retrial automatically leads to the reversal of a final judgement. Therefore, the Constitutional Court noted that the complainant's interest for not reversing a final judgement without conducting the oral hearing was more important compared to achieving the legitimate aim of swift and effective justice. The disputed law (certain normative content of the first sentence of section 1 of Article 430 of the Civil Procedure Code) unjustifiably restricted the complainant's right to a fair trial, which rendered it unconstitutional.

Thirdly, the Constitutional Court pointed out that the right to a fair trial implies the finality of judgement as an essential guarantee of the constitutional order and requires the legal consequences of such judgements to be fully acknowledged and enforced. Yet, the same constitutional right also protects the interests of an individual to question a final judgement and requests its re-examination if necessary circumstances exist. Therefore, the finality of a court decision is fully guaranteed until it is declared as erroneous in accordance with the procedure prescribed by law. It was observed by the Constitutional Court that the reversal of final judgement would violate the right to a fair trial of a litigant in a civil case if an erroneous nature of such judgement was not appropriately established.

The Constitutional Court further noted that newly discovered circumstances in a given case can, in fact, suffice to mandate the reversal of only a part of the final judgement and not of every judicial finding at hand. For example, a court in a given civil case could conclude that newly discovered circumstance was good enough to modify certain aspects of a court consideration (scope of a claim; type of an award, etc.) but did not mandate to reverse a final judgement as a whole. However, under the disputed provisions, provided that submission on newly discovered circumstances was declared well-founded, the final judgement was fully reversed, without an exception.

According to the Constitutional Court, it would have been a less restrictive measure if the Civil Procedure Code had established the rule whereby the judges were allowed on a case-by-case basis to determine, in the fair interests of the parties, the extent to which a final judgement was

reversed. Therefore, the Constitutional Court found that the disputed provision (certain normative content of section 3 of Article 430 of the Civil Procedure Code) disproportionately restricted the complainant's right to a fair trial and declared it unconstitutional. Moreover, the invalidation of the disputed provision was postponed till 30 April 2019 in order to give the Parliament of Georgia reasonable time for preparing new regulations pursuant to the standards established by the Constitutional Court.

Finally, pursuant to the case-law of the ordinary courts of Georgia the Constitutional Court established that the retrial due to newly discovered circumstances could be granted only when the court had already established that considering these circumstances the new decision would have been more favourable for the party who filed the action for retrial. Therefore, a retrial was necessary for the complainant - the party whose interests had been suffered due to the reversal of a final judgement. The complainant was the party to whom the disputed provision gave additional opportunity to win the case. Therefore, the disputed provision (Article 431 of the Civil Procedure Code) providing full retrial of the case had the nature of entitlement for the complainant and did not violate his right to a fair trial.

Citizens of the Republic of Armenia Garnik Varderesyan, Artavaz Khachatryan and Ani Minasyan v. the Parliament of Georgia and the Government of Georgia

On 7 December 2018, the Constitutional Court of Georgia adopted the Judgement in the case of "Citizens of The Republic of Armenia Garnik Varderesyan, Artavaz Khachatryan and Ani Minasyan v. The Parliament of Georgia and the Government of Georgia".

The subject of dispute in this case was the constitutionality of Article 1(v), Article 3(5)(a) of the law of Georgia on the Development of High Mountainous Regions and Article 3(1)(a), 5(3)(a) of the Rule adopted by Ordinance №591 of 19 November, 2015 of the Government of Georgia on adopting of the rule relating to granting, termination, suspending and restoration of the status of permanent resident of a high mountainous settlement with respect to Article 14 of the Constitution of Georgia.

The complainants asserted that the challenged provisions violated the right of foreign citizens and stateless persons to acquire the status of a permanent resident in high mountainous regions and therefore, excluded them from receiving socio-economic benefits attached to this status. The complainants contended that Georgian and foreign citizens equally participated in the social, economic and cultural development of high mountainous regions. Yet, the challenged provisions granted the benefits only to Georgian citizens and constituted discriminatory treatment on the ground of citizenship, which was contrary to Article 14 of the Constitution of Georgia.

The respondent party contended that differential treatment in the case was not highly intensive, as the complainant could acquire Georgian citizenship and qualify for above-mentioned benefits. The respondent party mentioned that the legitimate aims of the challenged provisions were economic security of the state and protection of state borders, moreover – effective use of the limited resources and prevention of migration processes.

The Constitutional Court of Georgia deemed that the challenged provisions constituted differentiation as they granted financial benefits, with the aim of socio-economic development of high mountainous regions, only to Georgian citizen. The Constitutional Court of Georgia noted that the socio-economic development of the high mountainous region was ensured by maintaining and/or increasing the number of population, regardless of their citizenship. Therefore, for the purpose of the disputed situation, Georgian and foreign citizens with a permanent residence permit in Georgia should be assessed as substantially equal persons.

The Constitutional Court of Georgia noted that differential treatment on the basis of citizenship did not belong to the classic grounds of discrimination listed in Article 14 of the Constitution of Georgia. Furthermore, under the disputed provisions, Georgian citizens received only partial aid in the form of wage and pension supplement, tax relief and exemption from the payment of electricity bills. Thus, the challenged provision did not create a drastic separatory gap between the comparative groups. Consequently, according to the well-established practice of the Constitutional Court, rational differentiation test was applied to the assessment of the constitutionality of differential treatment in the case.

The Constitutional Court did not adopt that the aim of economic security of the state justified the restriction, and noted that saving budgetary funds is not sufficient enough ground for justifying above mentioned differentiation. Furthermore, the Court noted that there was no rational and reasonable link between the disputed provisions and the protection of the frontier region, as the social benefits were granted to residents of high mountainous settlements and not for residents of frontier regions. Moreover, discussing the mentioned aim of prevention of migration processes, the court ruled that the restriction was not connected to participation in parliamentary elections, the better exercise of local self-government or controlling the migration process, as the regulatory scope of these provisions did not include determination of migration policy.

The Constitutional Court asserted that according to the Constitution of Georgia, the state is responsible to promote the equal socio-economic progress of high mountainous regions. Thus, the legitimate aim of the disputed provision was the realisation of this particular objective. The state adopted socio-economic benefits for residents of high mountainous regions in order to achieve this aim. The Constitutional Court noted that the state had a wide margin of appreciation to select the group of people who would receive socio-economic benefits. The Constitutional Court deemed that Georgian citizens have more solid legal connection and guarantees with the state of Georgia,

than foreign citizens with a permanent residence permit. Consequently, the Constitutional Court concluded that foreign citizens are more likely to emigrate from Georgia than Georgian citizens. Thus, the expectation, that the residents of high mountainous regions who receive the benefits will continue long-term residence in high mountainous regions is higher with regard to Georgian citizens than foreign citizens with a permanent residence permit in Georgia. Therefore, the potential effect of the state investment in the form of the challenged measure would be higher too. In view of these reasons, the state policy to distribute limited resources only to Georgian citizens is rational and reasonable. Accordingly, the Constitutional Court ruled that the challenged provision did not violate Article of 14 of the Constitution of Georgia.

Citizen of Georgia and Canada Giorgi Spartak Nikoladze v. the Parliament of Georgia

On 7 December 2018, the Second Board of the Constitutional Court of Georgia adopted the judgement in the case of "Citizen of Georgia and Canada Giorgi Spartak Nikoladze v. the Parliament of Georgia" (constitutional complaint №1212).

The complainant challenged the constitutionality of the rules regulating childcare issues. The complainant was a legal representative of his underage child and argued that the disputed provision, which allows common courts to issue interim order prohibiting one of the parents to take their child abroad, was contrary to Articles 22(2) and 22(3) of the Constitution of Georgia (freedom of movement).

The complainant indicated that the disputed rule did not satisfy the formal requirement of Article 22(3) of the Constitution of Georgia, according to which this right may only be restricted in accordance with the law. In contrast, the above-mentioned law did not explicitly provide the grounds for issuing the disputed interim order. Therefore, the disputed regulation contradicted the principle of legal certainty. In addition, the complainant was unable to take his minor child to Canada where he could get social welfare benefits as a citizen of that country. Consequently, the complainant argued that the provision unconstitutionally interfered in freedom of movement of a minor child.

The respondent party contended that the disputed rule meets the formal requirement of Article 22(3) of the Constitution of Georgia as the authority of common courts to issue of the disputed interim order is provided by the law. Besides, the legitimate aim of the law is to protect children's rights and the restriction meets the requirements of the principle of proportionality.

The Constitutional Court of Georgia noted that constitutional rights do not come into being when a person attains the age of majority, minors, as well as adults, are entitled to constitutional rights.

Article 22 of the Constitution of Georgia grants freedom of movement to all and there is no any age-related exception for the application of the right.

The Constitutional Court asserted that considering physical and mental abilities of minors, conditions of full application of constitutional rights may be different for them. As mentioned above, considering the lack of ability of minors to make critical decisions in an informed, mature manner, there is a necessity to restrict their scope of freedom to protect their own interests.

Taking the above arguments into account, the court indicated that the scope of constitutional rights of minors should be determined considering the nature of the concrete constitutional right. Minors need the assistance of parents or other qualified persons, in the exercise of their rights that require an informed decision-making process. In the present case, leaving a country is related to significant risks such as the probability of encountering significantly different socio-political environment, under the threat of physical or mental security and safety. Therefore, the Court stated, that the right to leave a country should be considered as a right, which cannot be exercised by minors independently, without the assistance of their parents.

The Court pointed out, that both parents possess the equal authority to make decisions for their minor children. Considering that leaving a country is a major decision for the development of a child, it cannot be decided by one parent. Therefore, in case of the absence of parents' agreement about this issue, there should be a decision-making mechanism that guarantees the protection of the best interests of the child.

On complainant's argument related to breach of legal certainty principle the Court noted that since the disputed provision did not prescribe ground for punishment, to declare the regulation unconstitutional, the complainant should have indicated the concrete normative content of the rule, which may lead to violation of the constitutional right. In case of absence of parents' agreement about the mentioned issue, the disputed regulation entrusts a court to decide based on the best interests of the child as a primary consideration. The court stated that regulating the issue in such manner not only makes no interference in the minor's freedom of movement but is a necessary measure for the full realisation of the right.

In view of all the above-mentioned, the Constitutional Court did not uphold the constitutional complaint №1212.

Ltd “Giganti Security” and Ltd “Security Company Tigonis” v. the Parliament of Georgia and the Minister of Internal Affairs of Georgia

On 14 December 2018, the Constitutional Court of Georgia rendered a judgement and partially upheld the constitutional complaint (№747) of the LTD “Giganti Security” and LTD “Security Company Tigonis” vs. the Parliament of Georgia and the Minister of Internal Affairs of Georgia.

In the constitutional complaint №747, the complainants challenged the constitutionality of the provisions related to the control of private security services. Section 1 of Article 24 of the law of Georgia on Private Security Activities stipulated that the authorized body that could exercise control over security activities was the Legal Entity of Public Law – Security Police Department. Section 2 of the disputed provision mandated controlling body to assess the compliance of the security organization activities with the requirements of the legislation and in case of violations, impose sanctions. Subparagraph “a” of section 2 of Article 2 of the regulations of Legal Entity of Public Law – Security Police Department that is approved by the order №266 of the Minister of Internal Affairs on “the Approval of the Regulations of the Legal Entity of Public Law – Security Police Department” provided for the objectives of Security Police Department and its mandate to undertake security activities for natural and legal persons on the basis of a private contract.

The complainant party argued that the disputed provisions granted the Security Police Department authority to, on the one hand, function as a controlling body of the private security organizations, and on the other hand, undertake security activities itself. According to the complainants, enabling a controlling body to act as an entrepreneur on the same market constituted a gross intervention by the State and rendered the existence of a free and competitive environment impossible. The complainants stated that confidentiality of commercial information is of decisive importance for entrepreneurial entities, and the disputed provisions provided the possibility of conveying such information to a competitor. Thus, the complainant considered disputed provisions unconstitutional with respect to the right of free entrepreneurship and competition guaranteed by Article 30(2) of the Constitution of Georgia.

The respondent party disagreed with the complainant and pointed out that the purpose of the disputed provisions was the regulation of private security activities, which, in turn, aimed at producing accurate records regarding security organizations, preventing the abuse of power and improving professional standards. According to the respondent, the Security Police Department was equipped with appropriate knowledge and skills that would ensure effective implementation of these functions. In addition, in the case of disproportionate sanctions and biased decisions, the entrepreneur had the opportunity to apply to a court and to protect its right.

The Constitutional Court of Georgia indicated that Article 30(2) of the Constitution of Georgia establishes the obligation of the State to set equal and fair market conditions for participant economic agents. State interference in any segment shall not result in the privileged position of a certain economic agent (or a group of agents).

According to the Constitutional Court, private security activities are based on private contracts and the autonomy of the will of the parties. Accordingly, the exercise of these activities in the conditions of free competition is protected by Article 30(2) of the Constitution of Georgia. The Constitutional Court distinguished between, on the one hand, the control functions, and, on the other hand, the availability of the information obtained during these activities. The Constitutional Court indicated that while exercising control functions, there is an increased risk of abuse of power by economic agents due to their profit interests. However, in the present case, legislation regulated the types of offences and sanctions with thorough precision. Accordingly, the discretion in the decision-making sphere of the Security Police Department was limited. In addition, according to the legislation, any sanction which the Security Police Department would impose on economic agents, were subject to appeal and verification, inter alia, in courts, which created an effective mechanism for preventing abuse of power by the Department. Consequently, the Constitutional Court ruled that by exercising control over economic agents by the Security Police Department, the freedom of competition guaranteed by Article 30(2) was not restricted.

The Constitutional Court pointed out that the Security Police Department had access to documents that contained information regarding the service tariffs, contracting parties, protection facilities and the duration of a contract of competing economic agents. The Court found that the Security Police Department could plan its own economic activities and improve its condition on the market with the help of the provided information. Thus, the procedure set forth by the disputed norms granted privileged market conditions to the Security Police Department and restricted the right guaranteed by Article 30 (2) of the Constitution of Georgia.

Regarding the proportionality of the restriction, the Court pointed out that the exercise of control of private security organizations by a state agency that has day-to-day contact with the security activities market and is well-acquainted with its specificities could be the legitimate aim of the regulation. However, the Constitutional Court decided that this restriction is not necessary as there was no evidence that would have convinced the Court in the inability of effective control of security activities by defining a controlling body in a different manner. Thus, the Constitutional Court of Georgia pointed out that the simultaneous exercise of two functions by the Security Police Department is disproportionate and section 1 of Article 24 of the law of Georgia on Private Security Activities and subparagraph “a” of section 2 of Article 2 of the regulations of Legal Entity of Public Law – Security Police Department that is approved by the order №266 of the Minister of Internal Affairs on “the Approval of the Regulations of the Legal Entity of Public Law – Security Police Department” contradicts Article 30(2) of the Constitution of Georgia. According to the decision of the Constitutional Court of Georgia, the invalidation of unconstitutional norms was postponed until 30 June 2019 and the respondent was granted the opportunity to settle the issue in accordance with the constitution.

The Constitutional Court did not find unconstitutional the provisions of section 1 of Article 24 of the law of Georgia on “Private Security Activities”, which stipulated the rights of the controlling body of private security activities. According to the Court, this provision defined the authority of the controlling body to examine the lawfulness of the activities of the economic agents to carry out the defence activities and to impose sanctions. The above-mentioned provision did not require the controlling body to be the Security Police Department. Thus, the Court ruled that the disputed provision in this regard did not restrict entrepreneurial freedom and did not contradict Article 30(2) of the Constitution of Georgia.

Citizens of Georgia – Khvicha Khirmizashili, Gia Patsuria and Gvantsa Gagniashvili and “Llc Nikani” v. the Parliament of Georgia

On 14 December 2018, the Constitutional Court of Georgia delivered the judgement in the case of “Citizens of Georgia – Khvicha Khirmizashili, Gia Patsuria and Gvantsa Gagniashvili and “LLC Nikani” v. The Parliament of Georgia”.

In the present case, the complainants disputed the constitutionality of the 3rd sentence of Article 56(5) and 3rd sentence of the Article 56(6) of the Criminal Procedure Code of Georgia, with the respect to Article 14 and Article 42(1) of the Constitution of Georgia. Article 56(5) of the Criminal Procedure Code of Georgia regulates the rules of recognition of a person as a victim. According to the provision, if a superior prosecutor does not recognise a person as a victim, the person in question may appeal the decision of the prosecutor to a district (city) court only in cases when a particularly serious offence had been committed. Article 56(6) of the Criminal Procedure Code of Georgia constituted that if, after issuing a decree on the recognition of a person as a victim, it is established that there are no appropriate grounds for such recognition, the prosecutor shall make a decision to annul that decree. The disputed provision provided for the right of the decision of a superior prosecutor to be appealed to a district (city) court only in cases when a particularly serious offence had been committed.

The complainants pointed out that according to the disputed provision a person does not have the right to appeal a decision of a superior prosecutor on recognition of a person as a victim. Therefore, this provision violated the right to a fair trial guaranteed by Article 42(1) of the Constitution of Georgia. Moreover, the complainants noted that according to the disputed provision, the victims of particularly serious offences could appeal the decision of the prosecutor to a district (city) court in contrast with them. In their opinion, victims in less serious and serious criminal cases have identical interests, and they were unequally treated based on the category of offences committed against them. The complainants considered that the disputed provision

provided an unequal treatment towards the victims of less serious and serious criminal offences and, hence, violated their right to equality guaranteed under Article 14 of the Constitution of Georgia.

The representative of the Parliament of Georgia contended that differential restriction of persons in cases of less serious or serious crimes from the right to appeal served to economize time and resources of the court. According to the respondent, granting the right to appeal to every category of crime would result in an ineffective administration of justice and could be against the protection of cost-effective litigation. Furthermore, the respondent party stated that unequal treatment in the given case was conditioned by the assumption that the degree of damage caused by a particularly serious crime is much higher than the possible damage resulting from the less serious crime.

The Constitutional Court of Georgia underlined the significance of the right to appeal in terms of recognising a person as a victim, as it works as a precondition for a person to have access to rights set forth in the criminal procedure legislation. Therefore, according to the court's judgement a person has a special interest to appeal the decision of the prosecutor on recognising him/her as a victim to a district (city) court. The Constitutional Court emphasised that the right of a person to appeal prosecutor's decision to a superior prosecutor cannot be an equal substitution of appealing it to courts as the courts are institutionally independent authorities from the prosecutor's office.

The Court also pointed out that while restricting the right to appeal, in order to prevent overloading of the courts, the complexity of the cases must be taken into account. It should be very carefully assessed how real is the risk of overloading of the courts in the case of granting persons the right to appeal. In the present case, in order to recognise a person as a victim, several criteria should be taken into consideration, such as criminal conduct committed against that person and whether it resulted in a moral, physical or material damage. Despite the vital importance of the decision of recognition of a person as a victim, the decision-making process and assessment are not generally considered to be distinctively complex. Therefore, granting persons with the right to appeal prosecutors' decision to the district courts in case of serious or less serious crimes cannot result in overloading of the courts.

The Court did not adopt the respondent's position that appellation of the decision of a superior prosecutor would limit the scope of prosecutorial discretion. According to the interpretation of the Constitutional Court of Georgia, recognising a person as a victim or decision to annul the victim's status cannot be based on the prosecutor's subjective assessment criteria. The prosecutor is obliged to recognise a person as a victim or annul that decree based on objective criteria regulated by the law. In case the prosecutor's decree is appealed to a court, the legality of the decision is reviewed and not the discretion of a prosecutor.

The Constitutional Court did not rule out the possibility of the restriction of the right to appeal the prosecutor's decision on granting victim status before the court. The court noted that the restriction would be justified in cases where the actual risk of the court's overload and impediment of justice is present. At the same time, the gravity of the crime committed against a victim and the damage shall be assessed. In conditions of mere referencing to the courts' overload in general, without any tangible evidence demonstrating this overload or impairment of justice, blank prohibitions, that disregard the degree of damage inflicted on the victim and the importance of exercising relevant rights of the victim, will be deemed unjustified.

In the present case, the Constitutional Court reviewed the disputed provision with respect to Article 14 of the Constitution of Georgia. The disputed rule constituted a deferential treatment of the persons affected by less serious and serious offences and people affected by particularly serious offences. Moreover, this differentiation was based on the precondition which could not be affected by a person's free will. Such treatment based on the degree of a crime was deemed unequal.

In the disputed case the comparator groups were in the same legal condition. Both, persons affected by less serious or serious crimes and victims of particularly serious offences suffered damage that could have been identical regardless of the degree of the crime. The persons had the same interest to be recognised as a victim and exercise the rights prescribed by the law.

The Constitutional Court of Georgia deemed differential treatment to lead to intensive derogation from equal treatment toward victims. Therefore, The Constitutional Court assessed the constitutionality of the disputed provisions based on the strict test; thus, used the principle of proportionality. Similar to the Court's position regarding Article 42, the Court reiterated that no evidence was presented in order to prove that the entitlement of the persons with the right to appeal prosecutor's decision in the district court would result in overloading of district courts. In addition, the Constitutional Court pointed out that the differentiation envisaged by the disputed norms restricted the rights of any person suffering from less serious and/or serious crimes and did not take into consideration the degree of the damages inflicted to the victim.

Considering the above-mentioned position, the Constitutional Court decided that the interest to appeal the decision of the prosecutor to a district court and the protection of persons from discrimination was of higher value than the legitimate interest to prevent the courts from excessive workload. Therefore, the disputed provisions were found unconstitutional with respect to Article 14 and Article 42(1) of the Constitution of Georgia.

Citizens of Georgia – Roin Miqueladze and Giorgi Burjanadze v. the Parliament of Georgia

On 14 December 2018, the Second Board of the Constitutional Court of Georgia adopted the judgement in the case of “Citizens of Georgia – Roin Miqueladze and Giorgi Burjanadze v. the Parliament of Georgia” (constitutional complains №1234 and №1235).

The subject of the dispute in the was the constitutionality of: A) Paragraph 4 of Article 332 (version of provision, that was in force from February20, 2016 to January1, 2018) of the Criminal Procedure Code of Georgia (CPCG) (dated of October 9, 2009) with regard to Article 14 and Paragraphs1 and 6 of Article 42 of the Constitution, and B) particular words of paragraph 1, the first sentence and normative content of the second sentence of Paragraph 2 of Article 94 and Paragraph 1 of Article 309 of the Criminal Procedure Code of Georgia (CPCG) (dated of February 20, 1998) with respect to Paragraphs1 and 6 of Article 42 of the Constitution.

According to the disputed norms, during the investigation of crimes defined in Articles 323-3232 and 325-329 of Criminal Code of Georgia (crimes associated with terrorism) interrogations of witnesses was conducted in the manner provided for by the CPCG of February 20, 1998. Meanwhile, during the investigation of any other crime examination of witnesses was performed in accordance with the CPCG of October 9, 2009. According to the former CPCG of February 20, 1998 witness could have been summoned by an interrogator and his/her appearance was mandatory, also witness was obliged to answer the questions. On the other hand, the new version of CPCG of 9 October 2009, stipulated mandatory interrogation of a witness only before a Magistrate Judge. In accordance with the new Procedure Code, at the stage of investigation defence party had the right to examine witnesses before a Magistrate Judge, only in case the following would be impossible to be conducted later, during the hearing on merits.

The complainant Roin Miqueladze argued that during the investigation of various crimes examination of witnesses was conducted in a different manner and it was a subject to a differential treatment between defendants. Defendants against whom investigation process of the ongoing case included an examination of witnesses before a Magistrate Judge were in a better legal position compared to other defendants. The complainant Giorgi Burjanadze claimed that better legal protection was granted for the witnesses who were examined before a Magistrate Judge and the disputed regulation caused distinction between witnesses. According to the arguments of the complainants, the disputed norms violated their right to equality before the law (Article 14 of the constitution).

The respondent, the Parliament of Georgia, contended that, in accordance with the new Procedure Code, the rules of communication between a witness and the investigative body had completely changed and giving testimony by the witness became voluntary. Therefore, there was a risk that in the transitional period, due to the low civic self-consciousness and lack of co-operation culture, individuals would not cooperate with the investigative body and conducting an effective investigation and administration of justice would be impaired. In order to secure against

existing risks during the transitional period, the legislator decided to provide the investigative body with the possibility to interrogate witnesses during the investigation of particular crimes.

The Constitutional Court noted that the person who was accused of committing a crime associated with terrorism had at least the same interest to use appropriate procedural safeguards and rights, as other defendants. Consequently, the Court emphasised that for the purpose of the disputed legal issue persons accused of different crimes were substantially equal.

The Constitutional Court explained that during the investigation of the crimes associated with terrorism the witness was interrogated before the investigative body and a prosecutor could easily obtain specific evidence – witness testimony. Furthermore, persons accused of committing above-mentioned crimes did not enjoy the number of procedural opportunities established by the CPCG of October 9, 2009 (for example, examining witnesses before a magistrate judge in accordance with paragraph 1 of Article 114).

The Constitutional Court noted that differential treatment was based on the type of crime that the person was accused of and this ground for differentiation was not one of those listed in Article 14 of the Constitution. Moreover, the intensity of interference was not high. Consequently, The Constitutional Court assessed the disputed norms applying the rational basis test. In the scope of which, the Court ruled that during transitional period interrogation of witnesses in the manner provided for by the CPCG of 20 February 1998 would ensure the effectiveness of the investigation. Furthermore, the Court mentioned that the disputed regulation had rational relations with the above-mentioned legitimate aims and hence did not contradict the right to equality.

Meantime, the Constitutional Court pointed out that the restriction of certain categories of defendants to enjoy the procedural rights established by the CPCG of 9 October 2009, including the right to examine witnesses before a Magistrate Judge if it would be impossible to examine a witness later, during hearing on merits, was contrary to the Constitution.

In view of all the above-mentioned, the Constitutional Court declared unconstitutional the normative content of the disputed provisions, which considered the interrogations of defendants' witnesses in the manner provided for by the CPCG of February 20, 1998 and excluded the opportunity of particular defendants to enjoy the procedural rights granted by the CPCG of October 9, 2009 in the context of interrogation of witnesses.

The Constitutional Court, in respect of differentiation of witnesses, explained that every witness regardless of the crime regarding which they were interrogated, had the same interest of protecting their rights and avoiding criminal liability. Consequently, the comparative groups were substantially equal, but the differentiation was justified with the legitimate purposes of

conducting effective investigation and administration of justice and hence disputed norms did not violate Article 14 of the Constitution.

The complainants also noted that according to disputed norms witnesses were interrogated by the prosecutor in the absence of the defendant, consequently, at the stage of an investigation, defence party had no opportunity to cross-examine the witness. Moreover, the right to interrogate witnesses at the stage of the investigation was granted only to the prosecution. Consequently, the complainants argued that the disputed regulation was contrary to principles of equality of arms and adversarial procedure.

The Constitutional Court elaborated on the distinction between the scopes of Paragraphs 1 and 6 of Article 42 of the Constitution. According to the Court's explanation, the general right to a fair trial is determined by Paragraph 1 of Article 42 and it encompasses the protection of every aspect of this right that is not namely indicated in other paragraphs. Furthermore, Paragraph 6 of Article 42 specifically recognises the right of the defendants to interrogate his/her witnesses in a manner equal to the prosecution. Consequently, equality of arms related to interrogation witnesses was protected by paragraph 6 of Article 42. Moreover, the Constitutional Court pointed out that the right to cross-examine witnesses of the opposing party was part of the adversarial principle and restriction of this right could be assessed with regard to Paragraph 1 of Article 42.

The Constitutional Court explained that, according to the CPCG of October 9, 2009, the information given by the witness at the stage of investigation could become evidence – the testimony of a witness, only if the source of information is interrogated before a judge, during the hearing on merits. Consequently, defence party had the possibility to cross-examine prosecution's witnesses during the hearing on merits before the court (before a judge or a jury). The Constitutional Court considered that the right to cross-examine witnesses of opposing party grants defendant opportunity to express his/her opinion about the given testimony and to question the credibility of the witness, hence this right should be practiced during the hearing on merits before the authorities who are responsible to make the final decision. In view of all the above-mentioned, the Constitutional Court decided that there was no interference in the adversarial principle and the defence party was granted appropriate procedural safeguards in order to cross-examine witnesses at the most critical stage and rebut opposing party's evidence.

The Constitutional Court pointed out that the interrogation of witnesses at the stage of investigation provided a party with the opportunity to be properly prepared for hearing on merits. According to the disputed norms, the prosecution had the possibility to know beforehand what information might be given by the witness during hearing on merits. On the contrary, the defence party had no such possibility and the only way to get information from the person who did not voluntarily cooperate was to interrogate him/her during the hearing on merits. The Constitutional Court noted that the disputed regulation forced defence party to present unexamined evidence at

a hearing on merits. Therefore, defence party was objectively unable to determine the content of a witness's testimony and decide whether it would be supportive of the defendant's position. In view of all the above-mentioned, the Constitutional court sided with the complainants' arguments that the right to interrogate witnesses at the stage of the investigation was granted only to the prosecution and this regulation was contrary to the equality of arms.

The Constitutional court explained that the granting of the right to interrogate witnesses at the investigation stage for the defence party could not interfere with the effectiveness of investigation or have any negative impact on the activities of the investigative body. The Constitutional court pointed out that interrogation of defendant's witnesses might demand the involvement of the court or other authorities in this process. Hence, the legitimate aim of restricting the right was to prevent the overloading of the court. The Constitutional Court considered that in this particular case there were no specific risks of overloading of the court. Therefore, the equality of arms during the interrogation of witnesses was important constitutional value and the restriction of this right in a blanket manner was not justified with the legitimate aim of preventing the court from overloading.

In view of all the above-mentioned, the Constitutional Court concluded that the granting of the right to interrogate witnesses at the investigative stage only to the prosecution violated paragraph 6 of Article 42 of the Constitution. Therefore, the Constitutional Court decided that the disputed norms served the important legitimate aims and immediate invalidation of the disputed norms may create a risk for effective investigation. In view of this, the disputed norms of CPCG of 20 February 1998, were invalidated from 30 June 2019.

2. International Relations and Other Activities

During 2018 the Constitutional Court of Georgia carried out active work at the intentional level and implemented a series of events.

2.1 The Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions (BBCJ)

From 1 January 2018, the Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions (BBCJ) was chaired for a one-year term by the Constitutional Court of Georgia. The CCG took over the presidency of the BBCJ from the Constitutional Court of Ukraine.

2.1.1 Information about the Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions (BBCJ)

The Association aims at promoting the protection of human rights and fundamental freedoms, as well as the independence of constitutional courts, implementing rule of law principles, and enhancing the exchange of experience between its members.

The BBCJ Declaration on the establishment of the Association was signed in Vilnius on 25 October 2015, by the Presidents of the Constitutional Courts of Ukraine, Georgia, Lithuania and Moldova. According to this declaration, the constitutional courts of the member States assert their intention to strengthen constitutional justice in their countries; agree to facilitate dialogue on all issues concerning institutional, structural and operational aspects of constitutional jurisdiction; assert their willingness to use in the most efficient way all the responsibilities and opportunities to enlarge and deepen their mutual cooperation in the field of constitutional justice.

The General Assembly and the Secretary General are the organs of the Association through which it carries out its activities. The aims and functions of the Association, its structure, membership and financial aspects are defined by the Statute. The Association presidency shall be rotated on the basis of the alphabetical order of the names of the states represented by the members of the Association.

2.2.2. Working Meeting of the Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions

Under the presidency of the Association, the first Working Meeting of the Presidents of the Member Constitutional Courts of the Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions was held on 3-4 April 2018, at the Hotel “Vinotel” in Tbilisi. The event was attended by the Presidents and Judges of the Constitutional Courts of Georgia, Lithuania, Moldova and Ukraine. At the meeting the Statement on Condemning Aggression and Violations of Human Rights in the Occupied Territories of the Association of Constitutional Justice of the countries of the Baltic and Black Sea Regions (BBCJ) was signed.

According to the Statement, Association Member Constitutional Courts (Georgia, Lithuania, Moldova and Ukraine) welcomes and strongly supports the efforts of Georgian, Moldovan and Ukrainian authorities in condemning the Russian Federation for the aggression and assault on sovereignty and territorial integrity of Georgia, Republic of Moldova and Ukraine as well as violation of human rights in the occupied territories thereof, and in persecuting those responsible for these crimes. Relevantly, the BBCJ calls on other constitutional justice institutions not to remain indifferent to aggression and other international crimes. It is particularly noteworthy that in the statement the focus is made on the Resolution adopted on 21 March 2018 by the Parliament of Georgia on the Gross Violation of Human Rights on the Occupied Territories of Abkhazia and

South Ossetia/Tskhinvali Regions of Georgia by the Russian Federation and on the “Otkhozoria-Tatunashvili List”.

At the meeting, the participants discussed the issues related to the 3rd Congress of the Association, including the decision on accepting the Constitutional Tribunal of Poland as a member of the Association was also taken.

2.2.3. The 3rd Congress of the Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions

On 15-17 May 2018, the Constitutional Court of Georgia hosted the 3rd Congress of the Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions (BBCJ) in Tbilisi. In the frame of the planned event, the Presidents and Justices of the member Constitutional Courts of the BBCJ, as well as the representatives of the Venice Commission of the Council of Europe and other high-level delegates visited Tbilisi.

Solemn Opening of the Congress was attended by the President of Georgia Mr. Giorgi Mamrgvelashvili and Prime Minister of Georgia Mr. Giorgi Kvirikashvili, Chairperson of The Supreme Court of Georgia Ms. Nino Gvenetadze, the 1st Vice-President of the Venice Commission Ms. Herdis Kjerulf Thorgeirsdottir and the Deputy Head of EU Delegation to Georgia Mr. Carlo Natale, addressing the participants with welcome speeches.

The theme of the 3rd Congress was the **‘Role of the Constitutional Courts in European Integration Process’**. The justices of the Member Constitutional Courts of the Association delivered presentations at the Congress. It is noteworthy that by the decision adopted at the 3rd Congress the Constitutional Court of the Republic of Lithuania will be chairing the Association from January 2019.

2.2 Conference of European Constitutional Courts

During 2017-2020, the Conference of European Constitutional Courts (CECC) will be chaired by the Constitutional Court of the Czech Republic. The President of the Constitutional Court of Georgia Mr. Zaza Tavadze participated in the Preparatory Meeting of the Presidents of the XVIII Congress of European Constitutional Courts on June 13-14, 2018. In the frame of the event, the International Conference, dedicated to the 25th Anniversary of the Constitutional Court of the Czech Republic – “Our Beginnings: Hans Kelsen’s Heirs” was held.

It is noteworthy that during 2014-2017 the Constitutional Court of Georgia chaired the Conference of European Constitutional Courts and the Czech Republic overtook the presidency of the Conference from the Constitutional Court of Georgia in the beginning of previous summer.

The Conference of European Constitutional Courts was established in 1971 and it brings together the Constitutional Courts of 41 European Countries and other relevant institutions. The conference aims at supporting sharing information and experience among its member courts on the issues of constitutional justice on the basis of the regular relationship between the Constitutional Courts, as well as it aims at increasing independence of the Constitutional Courts, as a significant factor for the democracy and rule of law in order to secure protection of the human rights.

The structure and competences of the Conference of European Constitutional Courts are regulated with its statute and conference regulation. The Constitutional Court of Georgia has been a member of the aforementioned conference since 2000.

2.3 Visits of the President/members of the Court held during 2018:

The Constitutional Court of Georgia, in the frame of conferences/bilateral meetings also closely cooperates with foreign Constitutional Courts and International Institutions.

- **26 January** - Upon the invitation of the President of the European Court of Human Rights Mr. Guido Raimondi the President of the Constitutional Court of Georgia Mr. Zaza Tavadze left on a working visit for Strasbourg, where he participated in the solemn opening session of the European Court of Human Rights.

In the frame of the visit, the President of the Constitutional Court of Georgia held meetings with the Judges of the European Court of Human Rights and the President of the Venice Commission Mr. Gianni Buquicchio.

- **9-10 April** - By the invitation of United Nations Office on Drugs and Crime (UNODC) the President of the Constitutional Court of Georgia Mr. Zaza Tavadze participated in the Launch Event of the Global Judicial Integrity Network in Vienna. The event was also attended by the Presidents and Members of Constitutional and Supreme Courts of 160 member countries of UN, as well as the representatives of the relevant institutions.

It is noteworthy that in 2016 the United Nations Office on Drugs and Crime (UNODC) launched a Doha Declaration Global Programme to promote the culture of lawfulness, which includes the creation of a Global Judicial Integrity Network and aims to assist judiciaries across the globe in

strengthening judicial integrity and preventing corruption in the justice sector, in line with Article 11 of the United Nations Convention against Corruption.

- **19-20 April** – Vice Presidents of the Constitutional Court of Georgia Mr. Merab Turava and Mr. Teimuraz Tughushi visited Bishkek, by the invitation of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic, where they participated in the International Conference dedicated to the 25th Anniversary of the Constitution of Kyrgyz Republic “Supremacy of Constitution and Its Direct Force: ensuring the legal protection of the Constitution”.
- **25-26 April** – Members of the Constitutional Court of Georgia Ms. Irine Imerlishvili and Ms. Manana Kobakhidze participated in the International Conference dedicated to 56th Anniversary of the Constitutional Court of the Republic of Turkey in Ankara on the theme of “Evaluation of the First Five Years of Individual Application”. The members of the Constitutional Courts of Europe and Asia, as well as the President of the Venice Commission Mr. Gianni Buquicchio participated in the event.
- **24-25 May** – Upon the invitation of the Constitutional Court of the Republic of Latvia member of the Constitutional Court of Georgia Mr. Giorgi Kverenchkhiladze participated in the International conference the “Role of the Constitutional Courts in the Globalised World of the 21st Century” in Riga. The conference was dedicated to the hundredth anniversary of the Republic of Latvia and was attended by the President of the Venice Commission of the Council of Europe as well as Presidents/judges of the European Constitutional Courts and European Court of Human Rights.
- **18-22 June** - The President of the Constitutional Court of Georgia Mr. Zaza left for Seoul, Republic of Korea upon the invitation of the International Association of Constitutional Law (IACL) and participated in the 10th World Congress of the Constitutional Law.

It is noteworthy that the 10th World Congress of Constitutional Law is supported by the Korean Ministry of Justice, the Supreme Court, and the Constitutional Court of Korea. The representatives of the Constitutional Court and relevant institutions around the World participated in the Congress. The aim of the Congress was to discuss various constitutional themes and find solutions for some pending issues the world is facing. In the frame of the visit, the bilateral meeting between the Presidents of the Constitutional Court of Georgia and Constitutional Court of Korea took place.

- **27 June** - The President of the Constitutional Court of Georgia participated in the Seminar “Constitutional Values and Human Rights: Challenges of the XXI Century” upon the invitation of the Constitutional Court of Ukraine. The seminar was dedicated to the 22nd Anniversary of the Constitution of Ukraine. Mr. Zaza Tavadze, in his capacity as the President of BBCJ delivered a

speech before the audience, he talked about the authority of the Georgian Constitutional Court and its role in upholding democratic values and fundamental rights.

- **6-8 July** - The President of the Constitutional Court of Georgia Mr. Zaza Tavadze and Vice President Mr. Teimuraz Tughushi paid a working visit in Baku, where they participated in the International Conference dedicated to 20th Anniversary of the Constitutional Court of the Republic of Azerbaijan “Rule of Law and Constitutional Justice: Values and Priorities”.

- **4-25 August** - The President of the Constitutional Court of Georgia Mr. Zaza Tavadze and Vice-President Mr. Teimuraz Tughushi left on a working visit to the United States of America. In the frame of the visit, the members of the Delegation got introduced with the system of secret surveillance and personal data protection in the United States at the Federal, State and Local levels. In particular, in the frame of the meetings the legislation regulating secret surveillance and personal data protection acting in the United States; best practice of exercising secret surveillance by the law-enforcement bodies; the legislation and protocol regulating internal and external information sharing between state bodies and private organizations; difference between surveillance and intelligence; protocol for unsanctioned application and dissemination of the personal data in penitentiary, educational and banking sectors were discussed. Members of the Delegation hold meetings in Washington DC, Little Rock, Atlanta and Boston. The visit was organized in the frame of the International Visitor Leadership Program (IVLP) by U.S. Department of State.

- **3-5 September** – The Delegation of the Constitutional Court of Georgia represented by the Vice-President of the Constitutional Court of Georgia Mr. Teimuraz Tughushi and a member of the Court Ms. Irine Imerlishvili paid a working visit to Seoul, Republic of Korea. The members of the delegation participated in the International Conference and various events dedicated to the 30th Anniversary of the Constitutional Court of Korea.

It is noteworthy that in the frame of the visit, a Memorandum of Understanding was signed by the Vice-President of the Constitutional Court of Georgia Mr. Teimuraz Tughushi and the President of the Constitutional Court of Korea Mr. Li Chinsu.

Memorandum of Understanding considers sharing experience in the field of judicial review, cooperation in a scientific-research field and organizing mutual visits.

- **7-8 October** - The President of the Constitutional Court of Georgia Mr. Zaza Tavadze paid a working visit to Warsaw by the invitation of the President of the Constitutional Tribunal of Poland. Mr. Zaza Tavadze participated in the discussion held among the Presidents of the Constitutional Courts of the Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions (BBCJ). The discussion was dedicated to the role of Constitutional Courts in

the modern-day state and was moderated by a renowned columnist Mr. Bronisław Wildstein. The event was also attended by other high-level state authorities, among them Prime Minister of Poland Mr. Mateusz Morawiecki.

In the frame of the visit, the President of the Constitutional Court of Georgia met with the Prime Minister of Poland. At the meeting, the parties talked about existing relationship between the countries and Georgian Judiciary system.

- **24-25 October** - The President of the Constitutional Court of Georgia Mr. Zaza Tavadze and the members Ms. Manana Kobakhidze and Ms. Eva Gotsiridze left on a working visit to Vilnius to attend the Vilnius Forum with the participation of the Presidents of the member courts of the Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions (BBCJ). Mr. Zaza Tavadze addressed the participants of the Forum and presented a report on the issue of Independence of the Constitutional Courts. The Vilnius Forum was opened by the Minister of Foreign Affairs of the Republic of Lithuania.

It is noteworthy that the Constitutional Court of the Republic of Lithuania marked 25th Anniversary from its establishment. Whereas on October 25, 2018 the Day of the Constitution is celebrated by the Republic of Lithuania. In the frame of the visit, Zaza Tavadze delivered a speech at the Seimas of the Republic of Lithuania and talked on the topic of “Role of an Individual Complaint in the Protection of Constitutional Rights and Freedoms in Georgia”.

- **2-3 November** - A member of the Constitutional Court of Georgia Ms. Irine Imerlishvili left for Yerevan on a working visit to participate in the conference “New Millennium of Constitutionalism”. “Contemporary international trends of formation and evolution of the Constitutional Responsibility Justice“; “The judicial power in the system of separation of powers: new challenges and solutions“; “International treaties, their Impact on the development of constitutionalism, rule of law and human rights“; “Effective Justice and monitoring” were discussed by the participants of the Conference.

- **10-12 December** - President of the Constitutional Court of Georgia paid a working visit to Würzburg. In the frame of the visit, Mr. Zaza Tavadze met with the students of the Law Faculty of the University of Würzburg and delivered public lecture on the competences and activity of the Constitutional Court of Georgia. In the frame of the same visit, a Memorandum of Understanding was signed between Constitutional Court of Georgia and the Law Faculty of University of Würzburg.

The Memorandum of Understanding considers sharing knowledge and experience in Constitutional and Human Rights Law between the Constitutional Court of Georgia and the Law Faculty of the University of Würzburg. In this respect, close cooperation in the direction of educational and

publishing activity, as well as organizing joint conferences, trainings, public lectures and other events is planned.

- **17-18 December** – In the framework of the chairmanship of the Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions (BBCJ) the Constitutional Court of Georgia hosted the delegation of the Constitutional Court of Moldova. The guests were welcomed by the Vice President of the Constitutional Court Mr. Teimuraz Tughushi. The members of the delegation met and shared experience with the legal advisors of the Department of Research and Legal Provision of the Constitutional Court of Georgia.

During the visit the delegation comprised with lawyers got introduced with the process of legal proceedings at the Constitutional Court as well as authority and practice of the Georgian Constitutional Court. Besides this, discussion on the role of the constitutional legal proceedings in the judiciary system of Georgia was discussed.

2.3 Cooperation with International Donor Organizations

The Constitutional Court of Georgia actively cooperates with International Donor Organizations. The EU-Funded Judiciary Support Project “EU4Justice” is particularly noteworthy among them, as the Court successfully organizes various activities in the direction of institutional strengthening and increasing efficiency of the Constitutional review in the framework of the given Project.

In 2018, in the framework of the abovementioned project the following activities were implemented:

- **5-6 February** - the workshop of the Constitutional Court of Georgia on Institutional Development, Civil Society Engagement and Effective Representation was held at the Hotel Marco Polo, in Gudauri. The event was attended by the judges of the Constitutional Court of Georgia, members of the Department of Research and Legal Provision as well as other staff members of the Constitutional Court, the representatives of non-governmental organizations and Academia, Parliament of Georgia and Public Defender’s Office of Georgia.

At the meeting the participants were welcomed and addressed by the President of the Constitutional Court of Georgia Mr. Zaza Tavadze, Justice Programme Manager at the EU Delegation to Georgia Mr. Peter Danis and Team Leader of German Society for International Cooperation (GIZ) Mr. Shalva Papuashvili.

Vice-President of the Constitutional Court of Georgia Mr. Teimuraz Tughushi made an Overview of 2017 Case Law of the Constitutional Court of Georgia. Based on the meeting format, Question/Answer and Discussion was held with the involvement civil society and academia representatives.

During a three-day meeting the representatives of the Department of Research and Legal Provision of the Constitutional Court of Georgia made presentations on the following topics: Bylaws of the Constitutional Court of Georgia; Concept of Case Management software for Constitutional Proceedings; Personal Data protection in Constitutional Proceedings; Constitutional Amendments and their impact on Constitutional Proceedings in Georgia and Problems of the Legislation regulating Constitutional Proceedings.

- **On 24-27 August** - In the framework of the EU-Funded Judiciary Support Project “EU4Justice” the workshop for the legal advisers of the Department of Research and Legal Provision of the Constitutional Court of Georgia was organised at the Hotel “Borjomi Likani”. The aim of the meeting was to identify legal gaps in the legislative acts regulating the activities of the Constitutional Court of Georgia and to prepare the respective draft.

- **21 November** – National Institute for Human Rights, Free University of Tbilisi in cooperation with the Constitutional Court of Georgia organized a Public Discussion at the hotel “Iota” on the judgement of the Constitutional Court of Georgia of October 19, 2018 “Citizen of Georgia David Malania against the Parliament of Georgia”. The judgement was related to exclude the possibility of appealing decisions on matters of administrative offences before the court. The Discussion was moderated by the Vice President of the Constitutional Court of Georgia Mr. Teimuraz Tughushi, Lawyer of Georgian Young Lawyers’ Association Nona Kurdovanidze, Deputy Head of the Department of Legal Research and Provision of the Constitutional Court of Georgia Mr. Levan Maisuradze, Associate Professor of Free University of Tbilisi and Researcher of the National Institute for Human Rights Mr. Davit Zedelashvili. The speakers discussed the arguments presented in the judgement of the Constitutional Court of Georgia and the legal gaps of the Administrative Offences Code of Georgia. The Discussion was held at the end of the meeting.

2.4 Summer School on Constitutional and Human Rights Law

The Constitutional Court of Georgia, in parallel to its main work, is actively involved in raising legal awareness of the society. From this viewpoint, the Summer School on Constitutional and Human Rights Law must be also mentioned, which for the first time was held in 2008. Since 2008 the Constitutional Court of Georgia has been organizing the Summer School on annual basis, which aims at raising professional knowledge of future lawyers in Constitutional and Human Rights Law.

Summer School 2018 was held in Batumi, at the premises of the Constitutional Court of Georgia from 23 July to 2 August 2018. During two weeks the participants of the Summer School attended the lectures on the case law of the Constitutional Court of Georgia and procedures of constitutional

legal proceedings; constitutional and legal standards of drug offences in Georgia, international legal aspects of drug policy, drug-addiction and public policy issues, as well as the Constitutional Law of the United States, Federal Republic of Germany and European Union. In the frame of the Summer School, moot court sessions were held.

The lectures of the Summer School were delivered by the Judges of the Constitutional Court of Georgia, as well as invited Professors: Jan Komárek, Professor of EU law at the University of Copenhagen; Robert A. Schapiro, Professor of Law at Emory University School of Law; Richard Vogler, Professor of Comparative Criminal Law and Criminal Justice at the University of Sussex; Hans S. Crombag, Professor of Behavioural Neuroscience, Co-Director Crime Research Centre (CRC) School of Psychology and Sussex Neuroscience at the University of Sussex; Andrew Koppelman, Professor of Law and Professor of Political Science at Northwestern University; Eckhard Pache, Dean of the Law Faculty at Julius-Maximilians-University Würzburg.

As a result of the competition 27 best students of the Law faculties of Georgian universities were selected for the participation at the summer trainings. Furthermore, it is noteworthy that the successful participants will have a chance to pursue the paid internship at the Court and further employment. It must be also mentioned that the Alumni of the Summer School occupy leading positions in public as well as private sector, which serves as the testament to the project's success.

Summer School 2018 was held with the financial support of EU4Justice Judiciary Support Program, USAID Funded EWMI-PROLoG Promoting Rule of Law in Georgia and in partnership with Grigol Robakidze University.

3. Major Directions of Strengthening of Constitutional Justice

The year of 2018 has been very productive for the Constitutional Court. Throughout the past year, 93 constitutional complaints and 2 referrals were registered within the Constitutional Court, and the Court finalised the proceedings with respect to 64 constitutional complaints.

It is noteworthy that the Court has rendered important judgements aiming to safeguard the rights and liberties of the accused as well as those of other participants of criminal proceedings. The Court made clarifications with respect to the principles of equality of arms and adversariality in criminal proceedings, as well as the rights of the accused or convicted persons placed in penitentiary facilities, - in particular, regarding their right to inviolability of personal dignity and private life, their right to be protected from degrading treatment, and the right of an individual to appeal decisions with respect to their victim status before the court.

Due to the last year's judgements,²⁷ condition of the accused in criminal proceedings has improved significantly. The regulation allowing questioning of witnesses during an investigation stage solely by the prosecutor was declared unconstitutional. Similarly, the rule granting the prosecutor the right to primary examination of an object, item, substance, or document containing information seized upon motion of the defense, even in cases where the object could have only been examined once, was declared unconstitutional. In this regard, there was no regulation creating a legal framework for the process of primary examination of evidence by the defense.

The Court established important standards with respect to the rights of persons placed in penitentiary facilities. The Court examined the constitutionality of the grounds and procedures related to strip searches, whereby any person accused or convicted was obliged to fully or partially remove his/her clothing.²⁸ The Constitutional Court noted that being forced to take off one's clothes in the presence of others causes discomfort and feeling of embarrassment. It shall not be intended to prevent an insignificant threat. Hence, it is necessary to regulate the rules and grounds for invoking such a measure.

The Constitutional Court made some important clarifications with respect to the rules on victim status in criminal proceedings,²⁹ and declared the regulation granting the right to appeal the decision on victim status solely to potential victims of particularly serious crimes unconstitutional. The Constitutional Court found that a victim has a significant legal interest to exercise relevant rights. As a result of this decision, potential victims of less serious and serious crimes will also have an opportunity to challenge the prosecutor's decision on granting the victim status before the court.

The Constitutional Court of Georgia has also made important observations with regard to the right to have the decision establishing liability reviewed by the court. According to the standard established by the Constitutional Court of Georgia, the right to a fair trial, as guaranteed under Article 42 (1) of the Constitution of Georgia requires that the decision establishing liability be appealable before the Court of Appeals in cases where: (a) liability is established for serious offences; and/or (b) practice of the courts of the first instance is not uniform. The Constitutional

²⁷ The Judgement №2/13/1234, 1235 of the Constitutional Court of Georgia of 14 December, 2018 in the case of "Citizens of Georgia – Roin Mikeladze and Giorgi Burjanadze v. The Parliament of Georgia" and the Judgement №1/4/809 of the Constitutional Court of Georgia of 14 December, 2018 in the case of "Citizen of Georgia Titiko Chorgoliani v. The Parliament of Georgia".

²⁸ The Judgement №2/4/665,683 of the Constitutional Court of Georgia of 26 July 2018 in the case of "Citizen of Georgia – Nana Parchukashvili v. The Minister of Justice of Georgia Special Penitentiary Service".

²⁹ The Judgement №2/12/1229,1242,1247,1299 of the Constitutional Court of Georgia of 14 December, 2018 in the case of "Citizens of Georgia – Khvicha Kirmizashvili, Gia Patsuria and Gvantsa Gagniashvili and "Nikani, Ltd." v. The Parliament of Georgia".

Court of Georgia found that it was unconstitutional to exclude the possibility of appealing decisions on matters of administrative offences before the court.³⁰

In 2018, the Constitutional Court found that imposing administrative responsibility for non-prescribed use of marijuana when the act of consumption does not create a threat for third parties or public interests was unconstitutional.³¹ The Constitutional Court has been actively engaged in various public discussions and other formats of deliberation to ensure proper conceptualization of the rendered decision and the standards set forth therein. This decision was widely reported on both by national and international media, and it attracted the attention of numerous authoritative media outlets.

Judgements in which constitutional rights are being interpreted for the first time, or where new standards are being established are of particular importance in the process of constitutional adjudication. Last year, the Court considered the issue of the protection of cultural heritage and related state obligations for the first time.³² By virtue of being an embodiment of the country's distinctiveness, history and culture, monuments of cultural heritage are of a great public significance. The Constitutional Court found that the State is under a positive obligation to utilise the maximum of its available resources to preserve monuments of cultural heritage and to protect them from being damaged by third parties. Standards with respect to the protection of cultural heritage set forth in this case by the Constitutional Court will significantly contribute to the preservation of the uniqueness of cultural heritage sites in Georgia and protection thereof, which serves as a principal precondition for the proper exercise of the right to enjoy the cultural environment.

2018 was an important year from the point of view of definitions made with respect to constitutional guarantees of economic freedoms. The Constitutional Court of Georgia has developed new approaches with regard to free competition.³³ The Constitutional Court found that any unjustified interference within competition which privileges either of economic agents constitutes a threat to the process of creation of equal and fair market economy. The Constitutional Court of Georgia established important standards with regard to cases where either of economic agents controls activities of other economic agents in the same field and has access to their commercial information. These standards will contribute to the creation of the free market as well as the development of competition, as it will ensure the uninterrupted course of entrepreneurial activities.

³⁰ The Judgement №2/7/779 of the Constitutional Court of Georgia of 19 October, 2018 in the case of "Citizen of Georgia Davit Malania v. The Parliament of Georgia".

³¹ The Judgement №1/3/1282 of the Constitutional Court of Georgia of 30 July, 2018 in the case of "Citizens of Georgia–Zurab Japharidze and Vakhtang Megrelishvili v. The Parliament of Georgia".

³² The Judgement №2/6/1216 of the Constitutional Court of Georgia of 27 July, 2018 in the case of "Citizens of Georgia – Marine Mizandari, Giorgi Chitidze and Ana Jikuridze v. The Parliament of Georgia".

³³ The Judgement №2/11/747 of the Constitutional Court of Georgia of 14 December, 2018 in the case of „Gigant Security, Ltd.“ and "Security Company Tigonis, Ltd." v. The Parliament of Georgia".

The consistent and foreseeable practice of the Constitutional Court forms important grounds for legal certainty and stability. Within the course of constitutional proceedings, cases might arise where legal or factual circumstances upon which a relevant judgement of the Constitutional Court was based were changed. Thus, interpretation of the Constitution as provided in these judgements might not satisfy the requirements of the development of certain aspects of social relations. The practice of the Constitutional Court should not be too rigid and it should constantly meet the requirements of the dynamic process of the development of the society and the law.

Last year, the Constitutional Court changed its practice with respect to the right to access official documents stored in state institutions.³⁴ According to the previously existing practice of the Constitutional Court, this right did not encompass the possibility of having access to information pertaining to health, finances, or other private matters of another individual. The Constitutional Court noted that the right to access official documents stored in state institutions also included the possibility of obtaining information related to health, finances, or other private matters of other persons. This aspect of the right is in conflict with the right of an individual not to have information regarding his or her health, finances and other private matters accessed by anyone without their prior consent. The Constitutional Court ruled that, given the conflict between these two rights, the issue is to be resolved on a case-by-case basis, in accordance with the principle of proportionality. Constitutional requirements regarding the right to access information were not met by the previously existing regulation, which *a priori* excluded access to a certain type of information stored in state institutions. From this point of view, the scope of the right to access information was broadened, and the standards for its protection were heightened.

During the last year, the Constitutional Court had to adjudicate once again on the issue of the right of foreign citizens to obtain agricultural lands.³⁵ The Constitutional Court had already rendered its judgement on this matter, where it found that prohibiting foreign citizens from owning agricultural lands was unconstitutional. The Constitutional Court noted that the provision under consideration contained regulation identical to that of the regulation which had previously been declared unconstitutional. In this case, the Constitutional Court did not deem it necessary to change the existing practice; it followed its precedent once again and found the provision prohibiting foreign citizens from obtaining ownership rights on agricultural lands void at the preliminary stage without hearing the case on merits.

On 16 December 2018, amendments to the Constitution of Georgia entered into force. Unequivocally, this is an important matter for constitutional adjudication. The scope of activities

³⁴ The Judgement №3/1/752 of the Constitutional Court of Georgia of 14 December, 2018 in the case of „Green Alternative, Non-commercial Legal Entity” v. The Parliament of Georgia”.

³⁵ Ruling №3/10/1267, 1268 of the Constitutional Court of Georgia of 7 December, 2018 in the case of “Citizens of the Hellenic Republic – Prokoph Savvid and Diana Shamanid v. The Parliament of Georgia”.

of the Constitutional Court of Georgia is inherently limited by the Constitution of Georgia and the order of values expressed therein. As a result of constitutional changes, some constitutional provisions have been formulated distinctively, which might lead to the necessity of adopting their different interpretation and application. Thus, given the amendments introduced to the Constitution, it is important to preserve the Constitutional Court's well-established practice regarding fundamental human rights.

Due to the constitutional amendments, activities and functions of the Constitutional Court of Georgia is regulated by the organic law. Before the said changes entered into force, activities of the Constitutional Court of Georgia were regulated under the Organic Law "On the Constitutional Court of Georgia" and the Law of Georgia "On Constitutional Proceedings". Following the changes in the legislation on the functioning of the Constitutional Court, the two laws were combined. As a result of these changes, some legal flaws as well as duplication of regulations has occurred. It is essential for legislation on constitutional proceedings to enable effective constitutional control and proper protection of fundamental human rights and liberties. Hence, it is necessary to eradicate existing flaws in the near future by the close cooperation of the Constitutional Court of Georgia and the legislative branch, so that the Constitutional Court is able to continue performing its constitutional functions without obstacles, in a more efficient manner.

It is our belief that informing the branches of the government as well as the public on the activities and challenges of the Constitutional Court will play an important role in the irreversible process of protecting and strengthening the supremacy of the constitution in Georgia. The protection of the supremacy of the constitution is a multidimensional process. Constant engagement of every branch of the government, as well as the society, is necessary for this process to be efficient. Active and proper involvement of the society will significantly simplify the process of protection of constitutional order and the values enshrined in the Constitution.

4. Statistical Overview of the Court's Activities

The Statistical data provides important information about the activities of the Constitutional Court of Georgia, the main features of the constitutional adjudication and constitution justice in Georgia. Below you can find the charts, which provide summarized data of the Constitutional Court of 2018, which describe the main areas of the activities undertaken by the Court in 2018. Moreover, for simplicity and more clarity for the perception of the data, here follow several definitions:

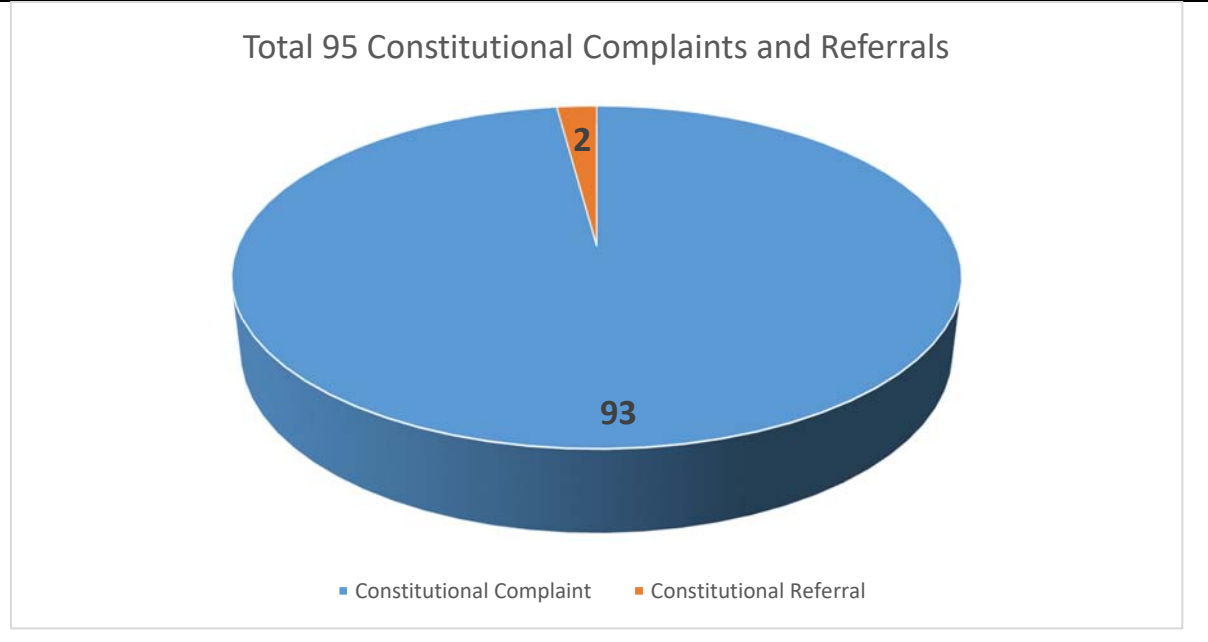
"Case", "Complaint" and "Act" - Certain part of statistical data deals with the finalised complaints and cases. In the process of constitutional adjudication, several constitutional

complaints may be joined as one case. In other words, “case” may consist of several constitutional complaints. “Act” refers to the finalised legal documents adopted by the Court. Specifically, acts of the Court include judgements, rulings and recording notices unless there is no respective indication.

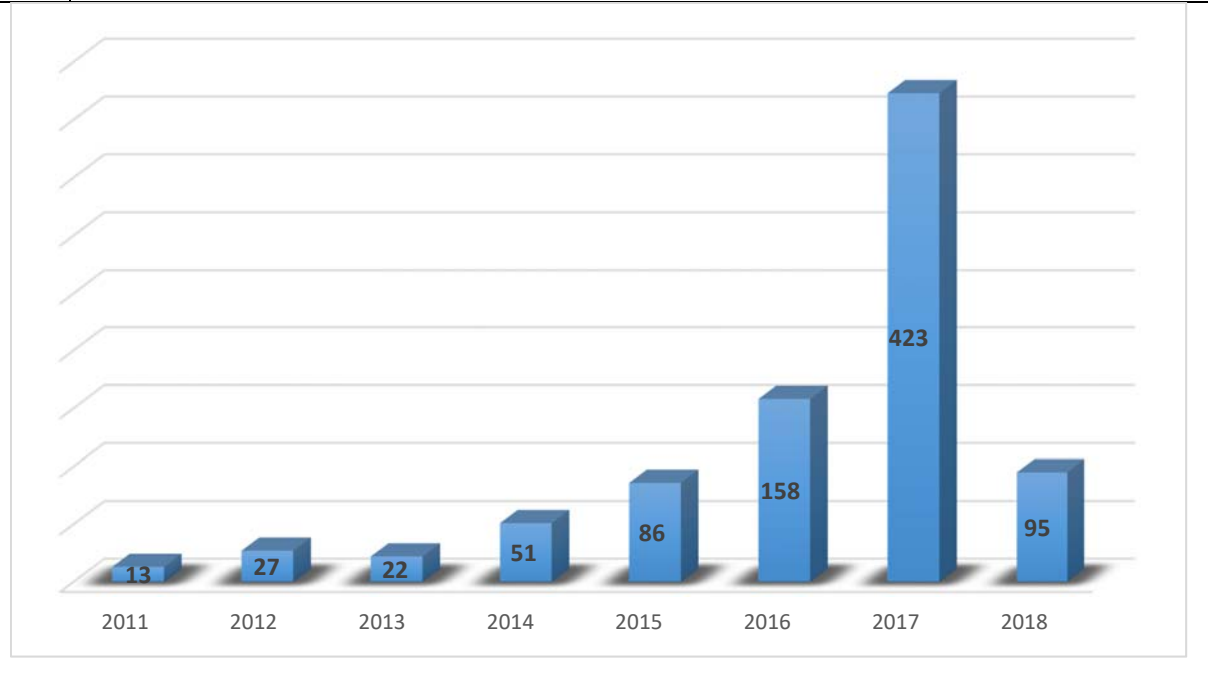
Competences – The chart N6 provides information on finalised cases by the competences. The competences of the Court are regulated under the Constitution of Georgia and legislation on the operation of the Constitutional Court of Georgia. The chart identified the competences according to Article 19 of the Organic Law of Georgia on the Constitutional Court of Georgia. For example, the competence 19(1)(e) on the chart refers to the competence set forth in Article 19(1)(e) of the above-mentioned law.

Overruling provision - Here we refer to the cases provided in Article 25(4¹) of the Organic Law of Georgia on the Constitutional Court of Georgia. More specifically, when the Constitutional Court ascertains at the preliminary session, that the disputed normative legal act or part thereof contains the rules identical to the rules that have been declared unconstitutional by the Constitutional Court, it adopts ruling on non-admissibility of the complaint for consideration on merits and on invalidation of the disputed act or a part thereof.

N1 | Number of Registered Constitutional Complaints and Referrals in 2018



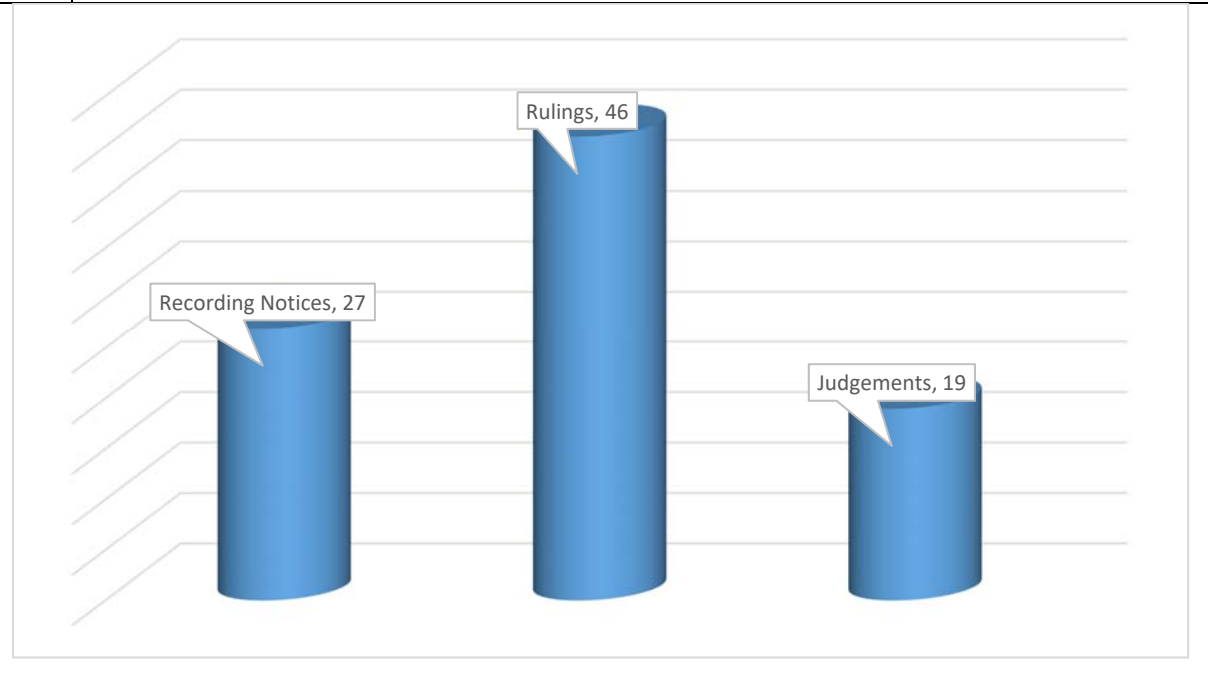
N2 | Number of Registered Constitutional Complaints and Referrals in 2011-2018



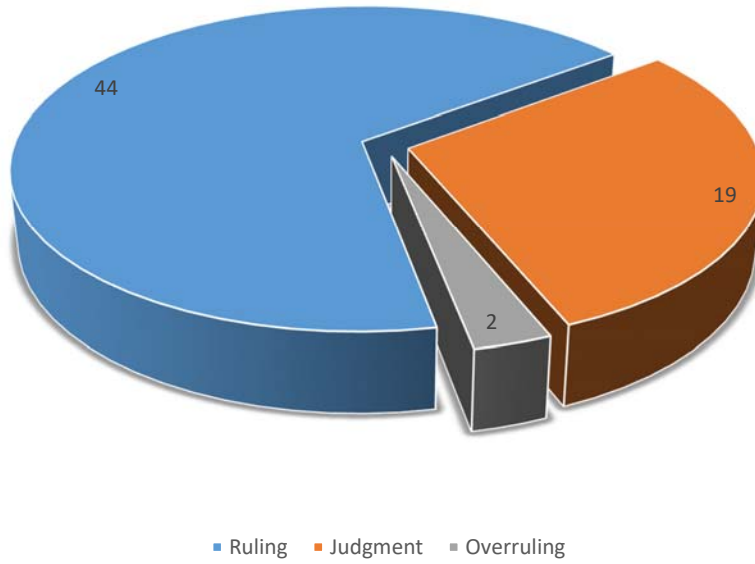
N3 Constitutional Complaints/Cases, Proceedings which were finalised in 2018



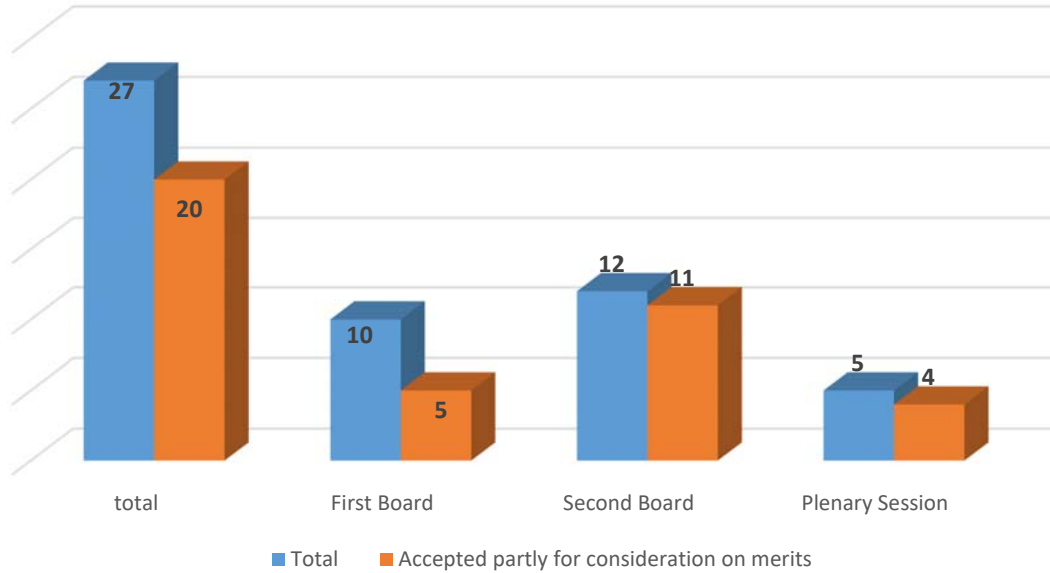
N4 Acts adopted by the Constitutional Court in 2018



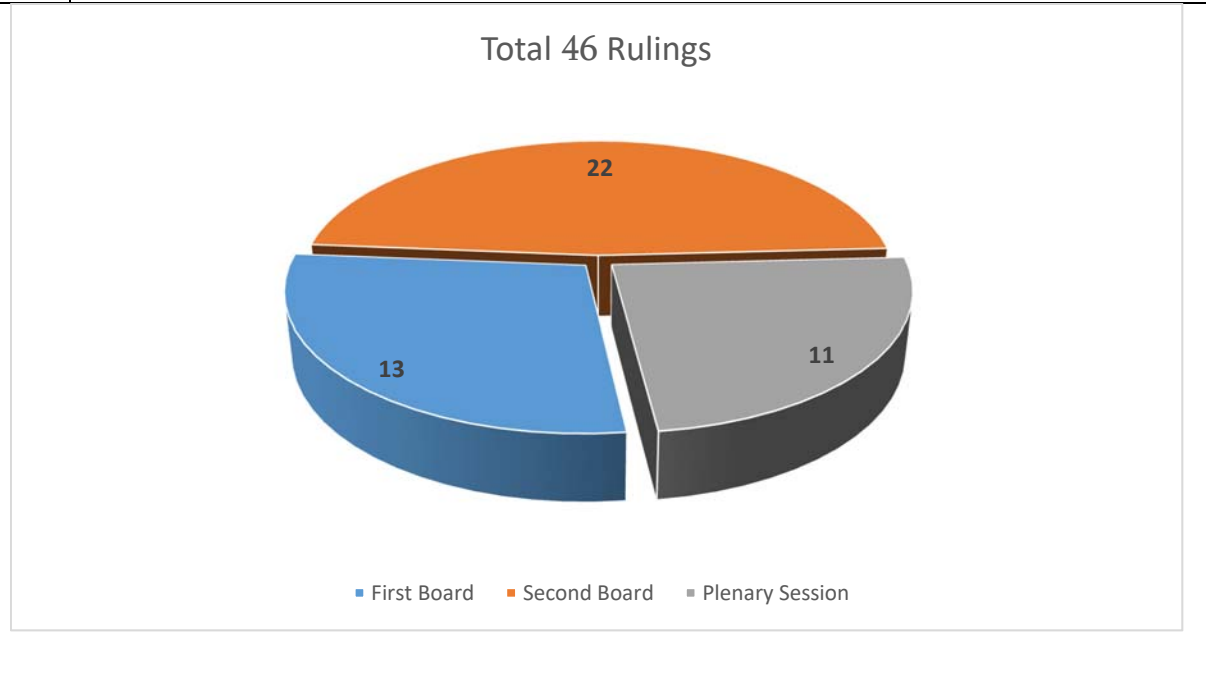
N5 Final Acts of the Constitutional Court in the Cases Finalised in 2018



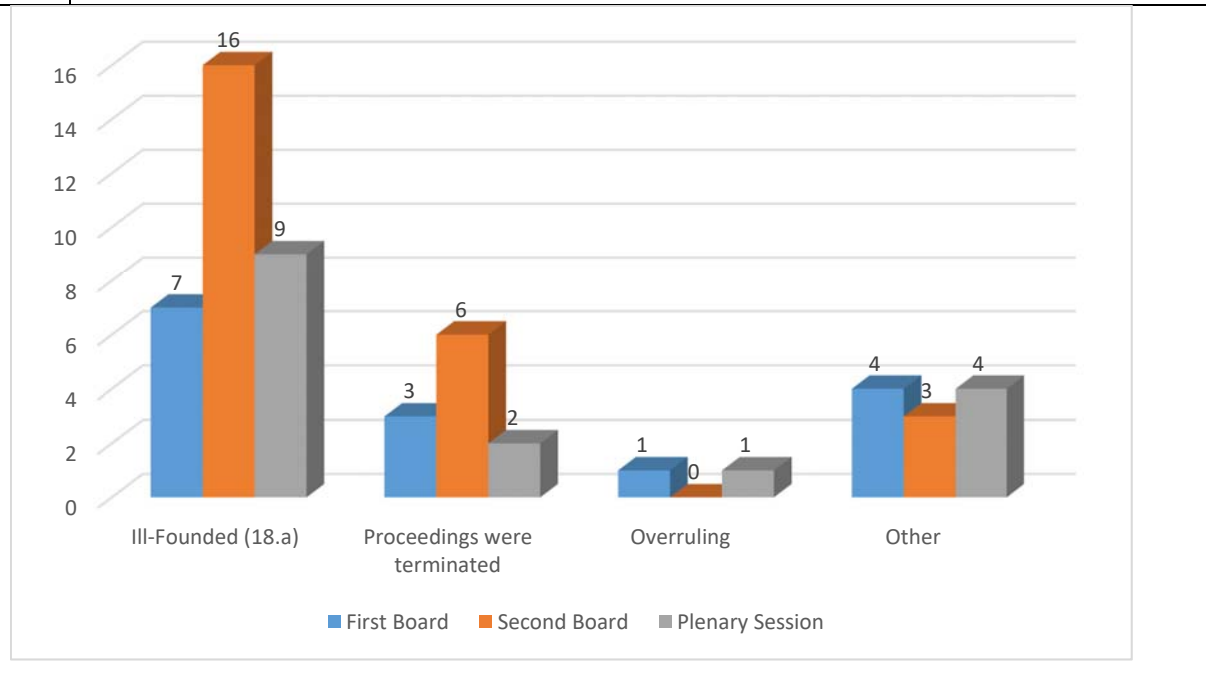
N6 Recording Notices on Considering Cases on Merits and their Consequences



N7 | Rulings of the Constitutional Court by Boards

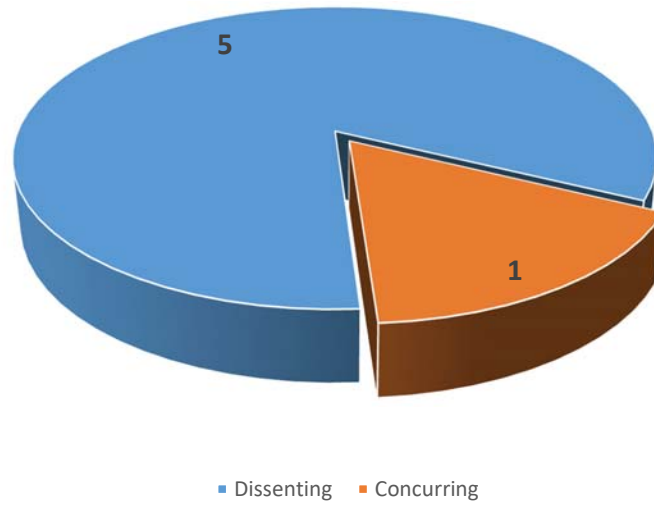


N8 | Rulings of the Constitutional Court by Boards and Respective Legal Grounds

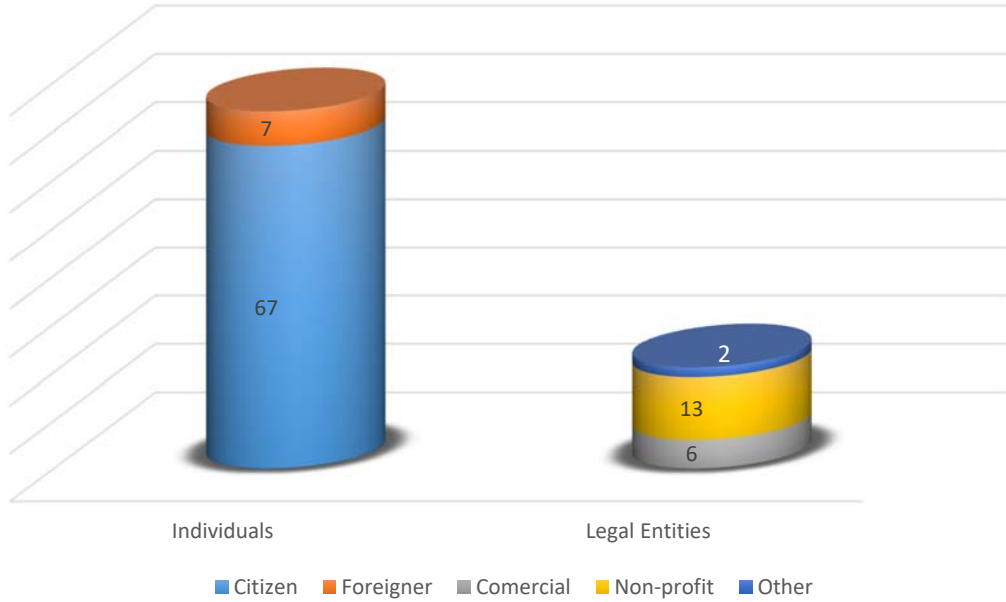


N9 | Number of the Concurring and Dissenting opinions of the Members of the Court

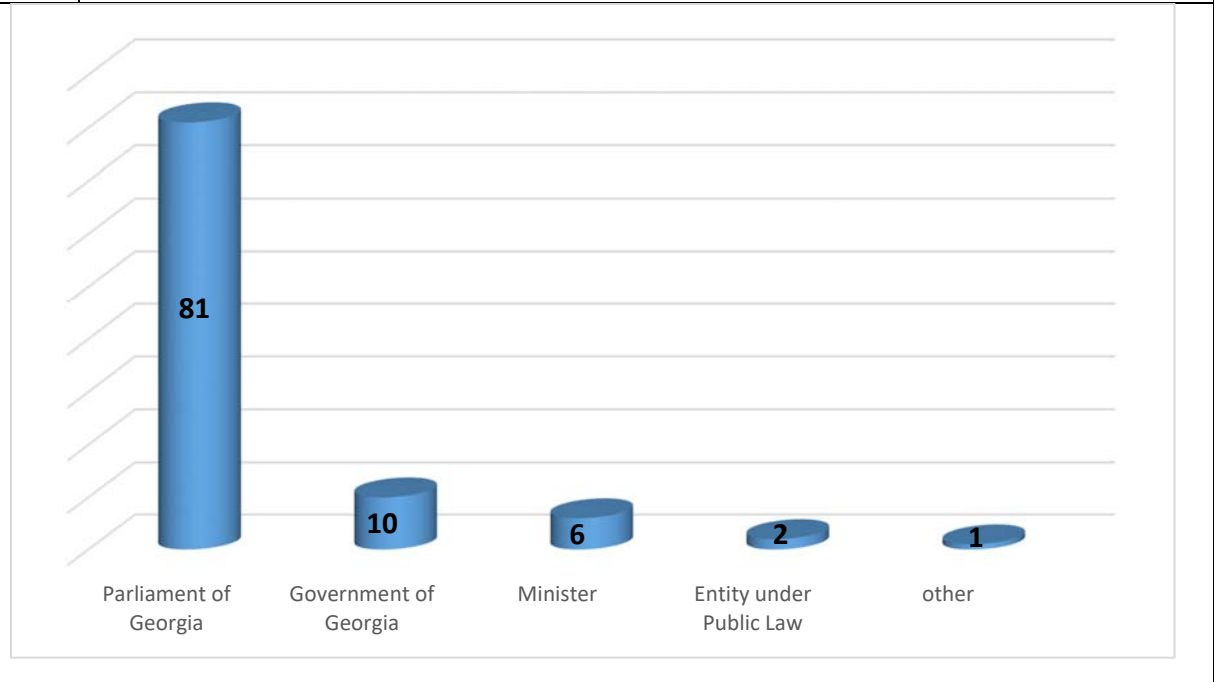
Total 6 Concurring and Dissenting opinions



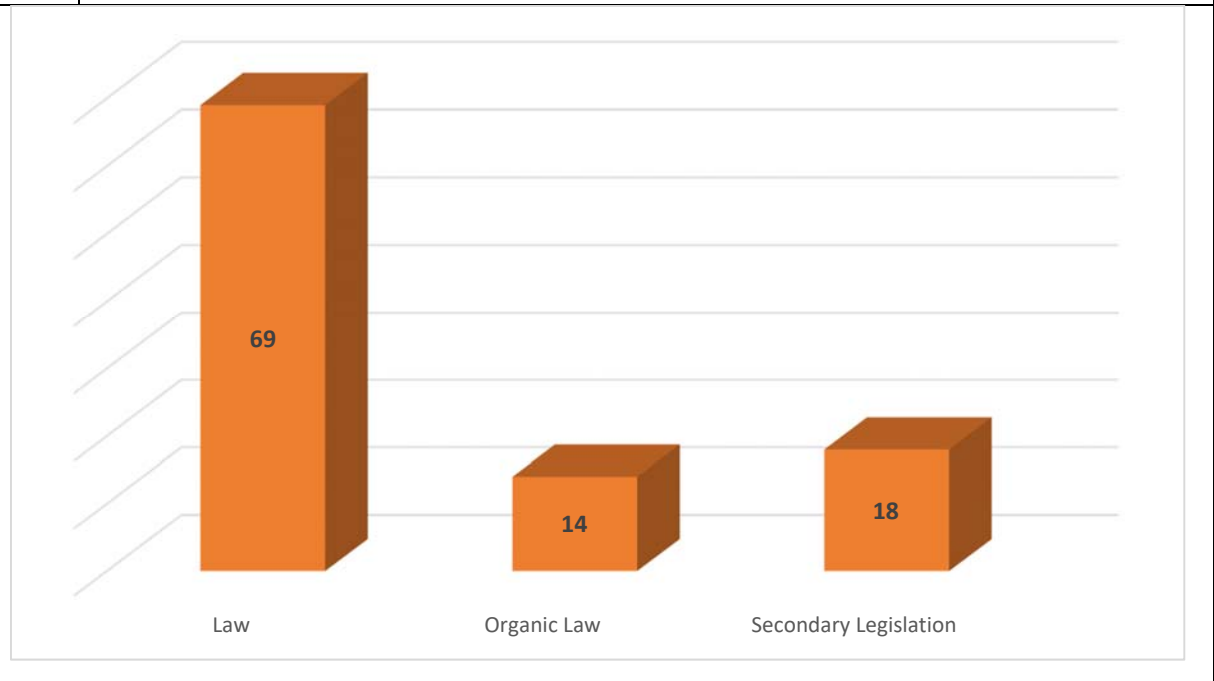
N10 | Complainant in the Acts of the Court Adopted in 2018



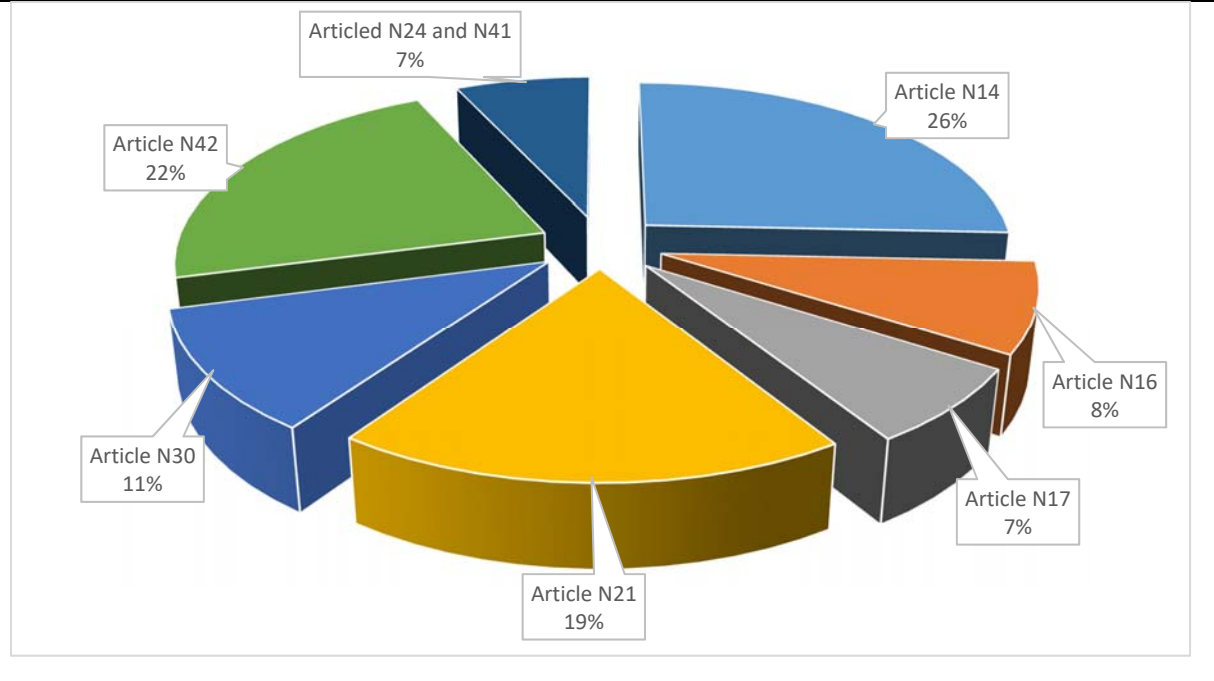
N11 Respondent in the Acts of the Court Adopted in 2018



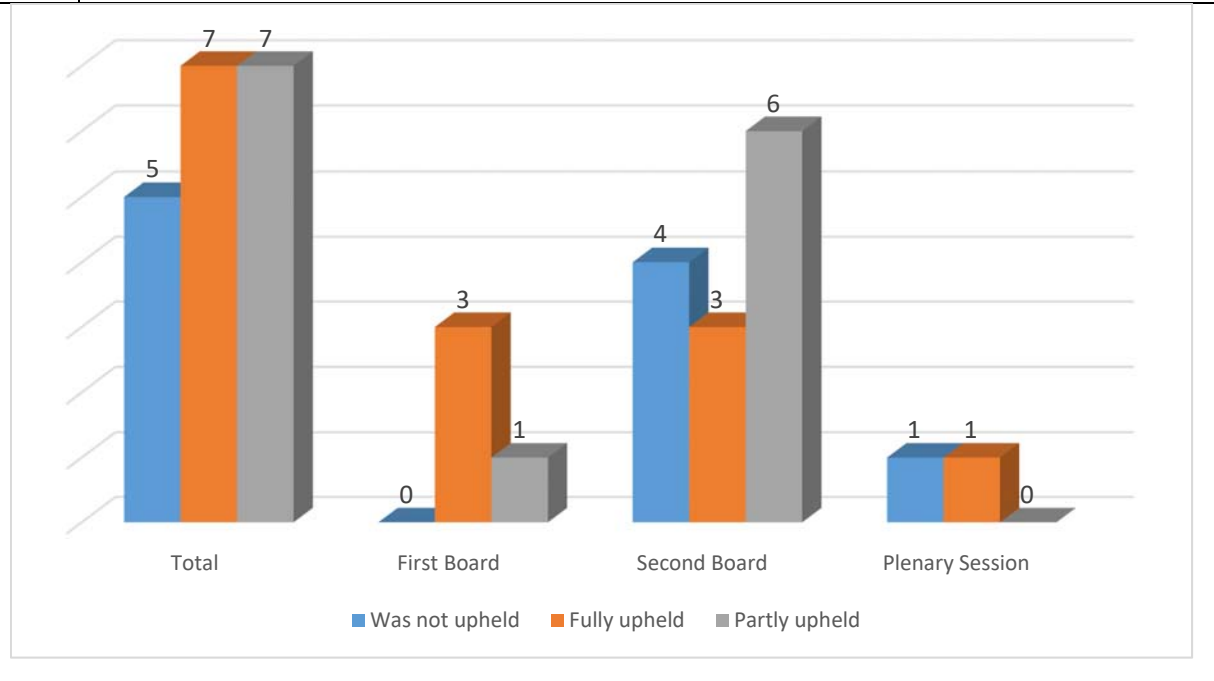
N12 Disputed Normative Acts in Rulings, Recording Notices and Judgements of the Constitutional Court of Georgia in 2018



N13 Articles of the Constitution to which Complainant Challenged the Constitutionality of the Disputed Norms (by the Acts of the Court)



N14 Consequences of the Judgements of the Constitutional Court by Boards



N15 Postponing the Invalidation of the Disputed Norms Considered as Unconstitutional by the Constitutional Court

