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EFFECTIVENESS OF INDIVIDUAL CONSTITUTIONAL COMPLAINTS DURING LEGAL PROCEEDINGS BEFORE THE COMMON COURTS

ABSTRACT

The current Civil Procedure Code of Georgia does not determine the courts' competency or their obligation to suspend legal proceedings whenever the Constitutional Court is considering the constitutionality of the law applicable to the said legal proceedings. Similarly, the law does not specify grounds for suspension of legal proceedings in cases where during the proceedings before common courts, a party to the case believes that an applicable legal norm does not comply with the constitution and hence, the party brings a claim before the Constitutional Court.

The present article addresses the effectiveness of individual constitutional complaints, as of a mechanism aiming to guarantee the protection of violated rights in the context of the lack of definition of the suspension of legal proceedings before the common courts.

I. CONSTITUTIONAL COURT OF GEORGIA, AS AN INDEPENDENT BODY OF CONSTITUTIONAL REVIEW

Under the Constitution of Georgia, constitutional review is conducted by the Constitutional Court of Georgia, whereas justice is administered by the common courts.[1] "While the task of the common courts is to resolve issues between parties to a case, constitutional control is aiming to protect the constitutional order and prevent breaches of the constitutional provisions".[2]

On the other hand, "constitution is the highest law in a democratic state, it underpins legal foundations of the state and at the same time determines, to a significant extent, political course of the country […]. Ensuring the supremacy of the constitution is vital [for the citizens of demo-

[1] Article 59, Constitution of Georgia, 24 August 1995, 24/08/1995.
[2] Maia Kopaleishvili and others, A Guide to Administrative Procedural Law (ed. Paata Turava, Bona Causa 2016) p. 64.

cratic countries] and, Georgia, clearly, is no exception".[3] According to Georgian legislation, it is the Constitutional Court of Georgia that ensures the supremacy of the Constitution, constitutional legality and protection of human constitutional rights and freedoms.[4] As the body of constitutional judicial control, the Constitutional Court of Georgia is tasked with assessing the compliance of various legal norms with the Constitution. In cases where the Constitution is violated, relevant measures are to be taken. "This very task defines the essence and substance of constitutional review, as well as its main purpose. By exercising the said task, bodies of constitutional review ensure the protection of such principles of the legal state as the supremacy of the constitution".[5]

It is noteworthy that according to the current legislation of Georgia the Constitutional Court is an independent body of constitutional review. In his book "The Struggle for Constitutional Justice in Post-Communist Europe", a renowned scholar in the field of the constitutional law and the Professor at the Washington College of Law, Herman Schwartz notes that, "this issue was influenced by an experience of Germany and other Western countries with respect to specialized constitutional courts and judges. By the 1990ies, the institution of constitutional control had existed for over than decades in most of Western European countries. Almost in all of them, this authority was exercised by a special constitutional court, which was distinct from the system of general courts".[6]

II. Constitutional proceedings on grounds of Individual Constitutional Complaints and Constitutional Submissions

Constitutional review in Georgia is conducted on the basis of individual constitutional complaints and constitutional submissions.

A. *Individual Constitutional Complaint*

The right of an individual to bring a constitutional complaint before the constitutional court is envisaged by legislations of numerous countries worldwide (e.g. Austria, Germany, Spain, Czech Republic).

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[3] Giorgi Papuashvili, Human Rights and the Case-law of the Constitutional Court of Georgia (Sezani Ltd. 2013) p. 11.
[4] Article 1, Organic Law of Georgia "On the Constitutional Court of Georgia", 31 January 1996, 27/02/1996.
[5] Giorgi Kakhiani, *Constitutional Control in Georgia and the Challenges of Its Functioning* (Tbilisi State University Publishing 2008), p. 20.
[6] Herman Schwartz, The Struggle for Constitutional Justice in Post-Communist Europe (Sezani Ltd. 2003), p. 63.

The Georgian model grants individuals a direct access to constitutional justice, wherein physical and legal entities have the right to bring constitutional complaints before the Constitutional Court when the violation or a threat of violation of individual rights arises“.[7]

Legal literature distinguishes two types of direct individual constitutional complaint in the contexts of abstract and concrete review. Georgian legislation introduces only concrete model of direct individual constitutional complaint.

In this case, “individuals are entitled to address the Constitutional Court only where their rights have been or will be violated”.[8] The same is envisaged by the German legislation.[9]

Direct individual complaints within the scope of concrete control consist of several subcategories, out of which only one – so-called normative individual constitutional complaint is found in Georgian legislation. “In this case, individuals can only bring claims regarding normative acts”.[10] The same is prescribed by legislations of Austria, Belgium, Poland, Latvia.

It is noteworthy that the Constitutional Court of Georgia does not have an authority to assess constitutionality of provisions upon its own initiative. Therefore, the Court determines and defines the content of rights in judgments delivered with respect to specific individual constitutional claims.

B. Constitutional Submissions by Common Courts

It can be said that by virtue of bringing constitutional submissions before the Constitutional Court, judges of the common courts also become parties to constitutional proceedings. In this case, constitutional submission serves as grounds for assessing the compliance of a normative act with the Constitution.

The Law of Georgia on the Constitutional Court of Georgia enumerates the list of issues, which shall be considered by the Constitutional Court on the basis of constitutional complaints or submissions.[11] In addition, constitutional submissions, similar to constitutional complaints, must satisfy the requirements enshrined in the Law on the Constitutional Court of Georgia. If these requirements are not met either from the point of view of formality or substance, constitutional submission will not be considered by the Court.[12] In numerous rulings, the Constitutional Court has noted that “in order for the constitutional complaint to be deemed substantiated, claims

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[7] Tinatin Erkvania, *Shortcomings of the Concrete Constitutional Control in Georgia* (in “Protection of Human Rights, Constitutional Reform and the Rule of Law in Georgia”, ed. Konstantine Korkelia EWMI 2017) p. 43.
[8] *ibid,* p. 43.
[9] For the Georgian example, *see* the Judgment №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”. Article 39, Organic Law of Georgia “On the Constitutional Court of Georgia”, 31 January 1996, 27/02/1996.
[10] See *supra* note 7, p. 43.
[11] Article 19, Organic Law of Georgia “On the Constitutional Court of Georgia”, 31 January 1996, 27/02/1996.
[12] Articles 31^1, 31^3, Organic Law of Georgia “On the Constitutional Court of Georgia”, 31 January 1996, 27/02/1996.

presented therein shall in substance be linked to the disputed provision".[13] Moreover, constitutional complaints should demonstrate evident and clear substantive link between the disputed provision and the constitutional provision with respect to which the Applicant is requesting to declare the norm unconstitutional.[14]

C. Importance of Individual Constitutional Claims and Constitutional Submissions by Judges of the Common Courts

As demonstrated by the practice, "the main course of exercising the powers of the Constitutional Court is reviewing constitutional claims".[15] This is also supported by statistical data, which indicate that the number of constitutional submissions is significantly smaller than that of constitutional claims. Within the last 10 years (according to the data of year 2017), the latter has reached 776, whereas the number of constitutional submissions was 62. According to the same statistics, there is a visible tendency of the growth of the number of constitutional complaints. In year 2017, 381 constitutional claims were brought before the Constitutional Court. As for the submissions, - in some years, there were no constitutional submissions before the Court at all. The highest number of constitutional submissions – 44, was recorded in 2016.[16]

The aforementioned statistics demonstrate that the common courts refer to the Constitutional Court quite rarely. "There is practically no legal dialogue (interaction) between the Constitutional Court and common courts, [...] [whereas] the aim of integration of the proceedings regarding individual constitutional complaints within the system of constitutional justice is to protect human rights".[17] It is exactly the high standard of the protection of human rights that makes the formation of democratic and legal state possible. In my opinion, in order to achieve this goal, it would be more efficient to increase the use of constitutional submissions before the Constitutional Court.

III. THE COMMON COURTS' USE OF THE RIGHT TO BRING CONSTITUTIONAL SUBMISSIONS BEFORE THE CONSTITUTIONAL COURT

According to the definitions enshrined within the Civil Procedure Code of Georgia as well as the Law of Georgia on the Common Courts, the common courts have the following right: if, in the opinion of a reviewing court, the applicable law fails to comply with the Constitution, the

[13] Ruling №2/3/412 of the Constitutional Court of Georgia dated 5 April, 2007 in the case of Citizens of Georgia – Shalva Natelashvili and Giorgi Gugava v. The Parliament of Georgia", para. 9. Ruling №2/2/438 of the Constitutional Court of Georgia dated 17 June, 2008, in the case of "Citizen of Georgia – Vakhtang Tskipurishvili v. The President of Georgia", para. 8.
[14] Ruling №1/3/469 of the Constitutional Court of Georgia of 10 November, 2009 in the case of "Citizen of Georgia Kakhaber Koberidze v. The Parliament of Georgia".
[15] Giorgi Kakhiani *supra* note 5, p. 21.
[16] Statistical data available at: http://constcourt.ge/ge/legal-acts/statistics [accessed 30 January 2019]
[17] Tinatin Erkvania *supra* note 7, p. 46.

Court shall suspend the hearing until the Constitutional Court makes a decision on this issue. The hearing shall be resumed after the Constitutional Court makes a decision on the issue.[18] The new edition of the Constitution of Georgia and, accordingly, of the Organic Law of Georgia on the Constitutional Court has changed the formulation of the said definition and as of now, reasonable assumption serves as grounds for bringing a constitutional submission before the Constitutional Court.[19]

In my opinion, the phrase "reasonable assumption" reflects the opinion expressed in the legal literature that the phrase "sufficient grounds" creates tension and reduces the cases of bringing constitutional submissions before the Constitutional Court by the common courts, because common courts might have a misperception that "the Constitutional Court will not agree with their view regarding the unconstitutionality of the provision at hand. Common courts should have the right to bring constitutional submissions before the Constitutional Court not only where a reasonable conclusion exists, but also in cases of a mere assumption".[20] Hence, the new edition of the law increases the possibility of using the said discretion.

A. *The Grounds for Using the Right to Bring Constitutional Submissions before the Constitutional Court by the Common Courts*

Judges of common courts can bring a constitutional submission before the Constitutional Court in the process of reviewing a specific case. In addition, the said decision should be based on specific circumstances and facts of the case, the assessment of which in relation to the disputed provision should create a reasonable assumption with respect to unconstitutionality of the norm. It is noteworthy that besides the common courts using this competency, the issue with respect to which they address the Constitutional Court is also important. An object of constitutional submissions can be the law or other normative act. In addition, it is necessary that the law or normative act at hand has to be applicable for a specific case. Thus, "there should be an assumption that in case of absence of the norm at hand or in case of its compatibility with the Constitution, the Court would have delivered a different judgment on a case".[21]

For example, in accordance with the exiting grounds, a constitutional submission brought by the Rustavi City Court was registered within the Constitutional Court on November 13, 2015 (registration №684) and, under the Recording Notice dated December 14, 2016, the said submission was declared admissible for its consideration on merits with regard to the part of the claim concerning the constitutionality of Article 197^1 of the Code of Administrative offences and its

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[18] Article 6, Civil Procedure Code of Georgia, 13 November 1997, 31/12/1997. Article 7, Organic Law of Georgia "On General Courts", 4 December 2009. Legislative Herald of Georgia, 41, 08/12/2009.

[19] Article 60.4.c, the Constitution of Georgia, "on the basis of a submission by a common court, review the constitutionality of a normative act to be applied by the common court when hearing a particular case, and which may contravene the Constitution according to a reasonable assumption of the court";
Article 19, Organic Law of Georgia "On the Constitutional Court of Georgia", 31 January 1996, 27/02/1996.

[20] Maia Kopaleishvili and others *supra* note 2, pp. 69-70.

[21] Giorgi Kakhiani *supra* note 5, p. 143.

note with respect to Article 14 (of the edition in force before an incumbent President of 2018 presidential elections took an oath) of the Constitution of Georgia.[22] Similarly, on September 18, 2018, submission №1352 of the Tbilisi City Court was registered within the Constitutional Court.[23] The said submission concerns constitutionality of Article 426(4) of the Civil Procedure Code of Georgia with respect to Article 42(1) of the Constitution of Georgia (of the edition in force before an incumbent President of 2018 presidential elections took an oath).

The analysis of the current Georgian legislation demonstrates that there might be a legal norm the unconstitutionality of which has not become an issue, however, while considering a specific case, given the factual circumstances, judges might have a suspicion that it is necessary to exercise the right to address the Constitutional Court with respect to the provision at hand. It can be said that the aforementioned mechanism can be deemed as one of the tools for developing the legal system. Hence, in order to achieve this goal, I believe that broadening the grounds for the competence of the common courts' judges to bring constitutional submissions before the Constitutional Court should be welcomed. Judging, among others, based on the statistical data, the legislature should encourage the common courts to engage in the dialogue with the Constitutional Court in order to ensure the protection of violated rights. The existing formulation "reasonable assumption " which was the result of a legislative amendment, gives judges more liberty and increases their engagement. However, I believe that this does not suffice for changing current statistics. Moreover, the use of the aforementioned mechanism by judges of the common courts and their engagement in the promotion of constitutional review is crucial.

B. The Competency of the Common Courts' Judges to Bring Constitutional Submissions before the Constitutional Court, as a Sphere of Judicial Discretion

It is considered that "Georgia is considered to be part of the Romano-Germanic legal system, which defines a legal culture of continental Europe".[24]

Accordingly, it is important to address the manner in which German law regulates the issue of constitutional submissions.

Under the Basic Law of the Federal Republic of Germany, "if a court concludes that a law on whose validity its decision depends is unconstitutional, the proceedings shall be stayed, and a decision shall be obtained from the Land court with jurisdiction over constitutional disputes, where the constitution of a Land is held to be violated or from the Federal Constitutional Court, where this Basic Law is held to be violated. This provision shall also apply where the Basic Law

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[22] Recording notice №3/8/684 of the Constitutional Court of Georgia of 14 December 2016 in the case of the Rustavi City Court's Constitutional Submission Regarding the Constitutionality of Article 197[1] of the Administrative Offences Code of Georgia and Its Note.
[23] Constitutional Submission №1352 of the Chamber of Civil Cases of the Tbilisi City Court, 18 September 2018.
[24] Giorgi Papuashvili, *Judgment of the Constitutional Court of Germany,* Jürgen Schwabe, Supreme Court of Georgia, Constitutional Court of Georgia, German Society for International Cooperation (GIZ), 2011, p. 9.

is held to be violated by Land law and where a Land law is held to be incompatible with a federal law".[25]

The analysis of the given Article demonstrates that, similar to Georgia, in Germany judges refer to the Constitutional Court and suspend the proceedings whenever they believe that the law does not comply with the Constitution. In such cases, legal proceedings are suspended until the Constitutional Court delivers its decision with respect to the relevant provision.

On one hand, under the Organic Law on Common Courts, the competency to bring a constitutional submission before the Constitutional Court falls within the discretion of the judiciary, however, what happens during legal proceedings before the common courts is that parties to a case file a motion requesting a judge to bring a submission before the Constitutional Court.

For further clarity, I will demonstrate a specific example regarding administrative legal proceedings before Tbilisi City Court, where a person subjected to administrative liability argued, that the norm which formed grounds for initiation of administrative proceedings against him was incompatible with the freedom of expression – the right guaranteed under Chapter 2 of the Georgian Constitution. Thus, the claim was that administrative sanctions be lifted. In the same case, a person subjected to administrative sanctions has filed a motion before the Court wherein they requested a reviewing judge to bring a constitutional submission before the Constitutional Court. The said motion was not satisfied on grounds of the discretionary nature of constitutional submissions. The Court ruled that it did not agree with the party on unconstitutionality of the provision and that there were no sufficient grounds for bringing a constitutional submission before the Constitutional Court.[26]

I believe that the reason for filing such motions is that after a dispute before the common courts is resolved, the parties are unable to change the result of the judgment even if they bring a constitutional complaint before the Constitutional Court, and even if that claim is satisfied. To a certain extent, this makes constitutional review for the parties less efficient.

It is also important to add that realizing the right to bring a constitutional submission before the Constitutional Court has to do solely with the opinion of the Court. This "constitutes a part of the sphere of judicial discretion insofar as the court is free in determining the necessity to refer to the Constitutional Court and does not depend on sustaining the motions of parties to the case".[27] Furthermore, "when refusing to grant the motion, [courts do not have an obligation to justify] constitutionality of a given norm, since it is only the Constitutional Court that is authorized to examine whether the law is compatible with the Constitution or not".[28]

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[25] Article 100, "Basic Law of the Federal Republic of Germany", 1949.
[26] Ruling of the Administrative Chamber of the Tbilisi City Court in the case №4/3070-18 regarding "Tbilisi City Hall's Municipal Supervision Service v. A. G.", 2 May 2018.
[27] Maia Kopaleishvili and others *supra* note 2, pp. 67-68.
[28] *ibid*, p. 68.

I believe that by placing constitutional submissions entirely within the sphere of judicial discretion, the legislature has considered such legitimate aims as economic reasonableness, prevention of lengthy proceedings, promotion of legal stability, providing the protection of human rights in a timely manner, etc. However, it is noteworthy that these rights are counterpoised by the necessity of constitutional review which, given the inexistence of relevant definitions in civil and administrative proceedings, becomes formal in nature.

The following case would be another example: the Appellant who brought an appeal against a judgment of the first instance court before Tbilisi Appellate Court was arguing that Tbilisi City Court had addressed the issue of the constitutionality of the applicable law without bringing a constitutional submission before the Constitutional Court, whereby it exceeded the scope of its competency. This case has raised the issue of the failure to distinguish between the competenties of common courts and the Constitutional Court. The Tbilisi Appellate Court ruled that nowhere in its decision had Tbilisi City Court discussed the compatibility of Article 68 of the Law of Georgia on Normative Acts with the Constitution, and that it had not concluded unconstitutionality of the said Article. Obviously, unconstitutionality of the provision could not have been established, since this issue most definitely falls within the competency of the Constitutional Court, and not the common courts.[29]

IV. Potential Inefficiency of Individual Constitutional Complaints during or before the Proceedings in Common Courts for the Purposes of Protecting Violated Rights

The examples provided above demonstrate that, given the inexistence of the definition of suspending legal proceedings before the common courts on grounds of constitutional submission, bringing individual constitutional complaints before the Constitutional Court for defending violated rights during or before the initiation of legal proceedings in common courts might be inefficient. In both cases, common courts are not under an obligation to wait for the decision of the Constitutional Court. Thus, an individual is facing the risk that the common courts might render their judgment based on a potentially unconstitutional norm.

Parties appear before common courts in order to remedy violated rights. Hence, after the dispute is resolved, they might lose an interest in whether an individual constitutional complaint is satisfied. Especially, given that under the Organic Law on Common Courts, recognition of a law or other normative act as unconstitutional does not mean annulment of judicial sentences and

[29] Ruling N3ბ/985-15 of the Chamber of Administrative Cases of the Tbilisi Court of Appeals in the case of “ 12 November, 2015; Ruling of the Administrative Chamber of the Tbilisi Appellate Court in the case of “LEPL Public Services Development Agency v. “N.M.” and “D.K.”, 12 November, 2015.

decisions previously adopted on the basis of this act but shall entail only suspension of their enforcement under the procedures established by the procedural legislation.[30]

For example, I would like to address a judgment of the Constitutional Court, whereby the normative content of Article 273 of the Code of Administrative Offences prescribing that the court order regarding administrative offences can appealed within 10 days after it is issued was declared unconstitutional with respect to Article 31 of the Constitution of Georgia. Here the Constitutional Court ruled that, in cases where a resolution has not been served in a timely manner, the possibility of entirely and effectively protecting the right to appeal the court's judgment in the courts of higher instance, which forms an important component of the right to fair trial under Article 31 of the Constitution, is being unreasonably limited.[31]

Regardless of the said decision, given the absence of relevant legal norms, the Applicant is unable to remedy his or her violated right and the said decision has no effects with respect to disputes that have already been resolved before the common courts.

In the case of *Davit Malania v. Parliament of Georgia*, a disputed phrase "which shall be final" of Article 272 (a), (c) and (d) of the Administrative Offences Code of Georgia was declared unconstitutional by the Constitutional Court on grounds that it restricted the possibility of appealing even in cases where it was necessary to establish uniform case-law. Furthermore, unconstitutionality of the words of paragraph (a) were also based on impossibility to access the Appellate Court in cases of grave offences.[32]

Notwithstanding the substance of this decision, the Applicant does not have the possibility to appeal the common courts' decision that has already been rendered.

It is noteworthy that the issue of compatibility of Article 20 of the Organic Law of Georgia on Common Courts with Article 42 of the Constitution was raised in the case of "*Broadcasting Company Rustavi 2 Ltd" And "Television Company Sakartvelo Ltd" v. Parliament of Georgia.* The Applicants argued that "declaration of unconstitutionality of a normative act by the Constitutional Court shall be followed by efficient legal consequences. [...] Although enforcement and finality of the acts of the common courts, as well as the rights of others represent an important value in a democratic society, [...] these values cannot override the protection of fundamental rights and liberties of an individual. The Applicant argues that the Constitution of Georgia clearly grants primacy to fundamental rights, which is expressed by limiting the activities of state organs by fundamental rights and liberties, as by directly applicable laws. The constitutional complaint also indicated that the principle of the legal state requires that the laws of State recognize and protect fundamental human rights and liberties to the full extent, by creating all the

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[30] Article 20, Organic Law of Georgia "On the Constitutional Court of Georgia", 31 January, 1996, 27/02/1996.

[31] Judgment №1/3/1263 of the Constitutional Court of Georgia of 18 April, 2019 in the case of "Citizen of Georgia Irakli Khvedelidze v. The Parliament of Georgia", para. 34.

[32] Judgment №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", paras. 52-53.

necessary guarantees. In this regard, the Constitutional Court represents the most essential constitutional guarantor. The Applicants argued that if, while administering justice, the common courts keep applying a legal norm that had been declared unconstitutional by the Constitutional Court, judgments of the latter will only be declaratory in nature and will have no effect whatsoever with respect to individuals whose rights were violated by a State - including by (common) courts - by virtue of the unconstitutional normative act".[33] It is noteworthy that the said constitutional claim has been declared admissible by recording notice of the Constitutional Court dated February 25, 2016 with respect to Article 42(1) of the Constitution.[34]

Unlike civil and administrative proceedings, the Georgian Code of Criminal Procedures prescribes that, in certain cases, a judgement that has entered into force shall be reviewed due to newly found circumstances. One of such cases is where there exists a decision of the Constitutional Court of Georgia that has found that a criminal law applied in a specific case is unconstitutional.[35]

For instance, the Constitutional Court of Georgia found unconstitutional the normative content of the words "illegal consumption without medical prescription" of Article 273 of the Criminal Code of Georgia that prescribed criminal liability for consumption of narcotic substance – marijuana which is indicated in 92nd horizontal cell of the second appendix of the law of Georgia "On Narcotic Drugs, Psychotropic Substances And Precursors and Narcological Assistance". The said normative content was declared incompatible with Article 16 of the Constitution.[36] Afterwards, a convicted person filed a motion before the Tbilisi Appellate Court, requesting to review his case due to newly found circumstances, - in particular due to the judgment of the Constitutional Court dated 30 November 2017, whereby he argued that his conviction should have been reconsidered. Under the ruling of the Criminal Chamber of the Tbilisi Appellate Court, due to the said judgment of the Constitutional Court, criminal sanction for committing an offence prescribed by Article 273 was lifted and the Appellant and both imprisonment and an unserved sentence were annulled.[37]

It is clear that the possibility prescribed under the Criminal Procedure Code to review a judgment due to newly found circumstances is one of the means for the protection of the rights of defendants. Due regard shall be given to the aim of the legislature not to allow conviction on grounds of a norm that was declared unconstitutional. However, a question stands as follows:

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[33] Recording notice №3/1/719 of the Constitutional Court of Georgia of 25 February 2016 in the case of "Broadcasting Company Rustavi 2 Ltd" and "Television Company Sakartvelo Ltd" vs. The Parliament Of Georgia", paras. 6-7.
[34] *ibid*, pp. 11-12.
[35] Article 310, Criminal Procedure Code of Georgia, 9 October 2009. სსმ, 31, 03/11/2009.
[36] Judgment №1/13/732 of the Constitutional Court of Georgia of 30 November 2017 in the case of "Citizen of Georgia Givi Shanidze v. The Parliament of Georgia".
[37] Judgment №1/აგ-371-18 of the Criminal Chamber of the Tbilisi Appellate Court dated 5 June 2018, motion filed by G. Sh.

was it because of fundamental differences between the principles of criminal and civil/administrative law that the judgments of the Constitutional Court are not given a retroactive effect in civil and administrative cases?

We should also consider that the Criminal Procedure Code allows the review of unconstitutional or unjust convictions due to a judgment of the Constitutional Court at any given time.[38] As for the Code of Civil Proceedings, - it prescribes a temporary limit, whereby the action for the renewal of proceedings due to annulment of the judgment or due to newly found circumstances shall be submitted within one month. This period shall commence on the day when the party becomes aware of the grounds for annulment or retrial.[39]

In my opinion, giving the judgments of the Constitutional Court retroactive effect in civil and administrative cases, similar to criminal cases, will ensure the effective protection of human rights and liberties. However, this might not be compatible with procedural principles such as equality, adversariality and stability of the rights obtained on grounds of the judicial decision.

A. *Efficiency of Giving the Common Courts an Authority to Suspend Legal Proceeding whenever an Individual Constitutional Complaint is Brought before the Constitutional Court*

Under the current Georgian legislation, bringing the common courts' constitutional submissions before the Constitutional Court entirely falls within the sphere of judicial discretion, which, in my opinion serves the purpose of avoiding artificial prolongation of proceedings in common courts by submitting individual constitutional complaints. It is clear that, given the special nature of the tasks of the Constitutional Court, it would be inappropriate to address the Court for examining any laws and norms without any limits. Similarly, it would be unjustified to ignore the necessity of temporary limits imposed on consideration of cases before the common courts. However, I believe that for an increased efficiency of the constitutional control, it would be better to broaden judicial discretion of common courts whereby they are competent to make a decision on whether to suspend or not the proceedings whenever a party to the case brings an individual constitutional claim before the Constitutional Court, requesting to examine constitutionality of the law or the norm applicable to the given proceedings, or in cases where the Constitutional Court is considering an individual constitutional complaint.

Clearly, in order to avoid the aforementioned risk, this would be justified in the context of introduction of high standards by the legislature. Such standards might be giving the common courts the right, and not an obligation to suspend judicial proceedings, provided that the assessment of the criteria for the grounds of suspension falls within the judiciary discretion as well. Such criteria can be as follows: (a) what the subject of the dispute is and whether or not it is substantial for deciding a given case; (b) what stage the case is at the Constitutional Court; (c) whether

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[38] See *supra* note 37.
[39] Article 423, "Civil Procedure Code of Georgia", 14 November 1997, 47-48, 31/12/1997.

the claim has been declared admissible; (b) to what extent the claim has been declared admissible; (d) whether or not the Constitutional Court has rendered its decision on the same issue; (e) the significance of the Constitutional Court's future decisions with respect to cases regarding Chapter 2 of the Constitution, etc.

It should be noted that the administration of legal proceedings, examining and assessing factual circumstances, interpretation and application of the law is the prerogative of the courts that are authorized to do so. However, it is also noteworthy that, within the scope of his or her inner conviction, a judge might be given a certain autonomy for considering special circumstances of certain cases whenever an individual claim is brought before the Constitutional Court. In this regard, judges of the common courts can make a decision to suspend legal proceedings even if they do not believe that the applicable law is unconstitutional. Giving them such a possibility is necessary and important also given the fact that the common courts' interpretation/application of the fundamental rights given in the Chapter 2 of the Constitution goes beyond the constitutional control in Georgia, because the existing classical model of normative individual constitutional complaint does not allow it.

CONCLUSION

This paper addressed one of the means of incorporating individual constitutional complaints into the system of constitutional justice. In particular, giving the common courts a discretionary power to suspend legal proceedings whenever a claim questioning the constitutionality of law or a norm applicable to the case at hand is brought before the Constitutional Court, or whenever the latter is considering such a case.

As of today, Georgian legislation does not prescribe the aforementioned possibility on the said grounds. The Court will only stop legal proceedings if, in the process of reviewing the case, it concludes that there are sufficient grounds indicating that the law or other normative act in question will possibly be declared incompatible with the Constitution.

I believe that leaving the possibility to bring constitutional submissions before the Constitutional Court entirely within the judicial discretion serves the purpose of avoiding artificial prolongation of legal proceedings. On the other hand, however, such a regulation puts parties to a case before the risk that common courts will deliver a judgment based on a potentially unconstitutional norm.

In my opinion, this raises some questions with respect to efficiency of bringing individual constitutional claims before the Constitutional Court in order to remedy violated rights. The legislature has ignored the purpose of individual constitutional claims. Upon the completion of judicial proceedings before the common courts, parties lose legal interest in the results of individual complaints, especially given that under the law On Common Courts, declaring the norm uncon-

stitutional will not lead to nullification of the results of judgments and rulings delivered on grounds of the said norm.

I believe that in order to increase efficiency of the constitutional control, we should welcome the broadening of the judicial discretion of common courts, whereby they are competent to make a decision on whether or not to suspend legal proceedings whenever a party to a case brings an individual constitutional complaint before the Constitutional Court with respect to the applicable provision, or whenever the Court is considering such an individual complaint. In addition, given that interpretation/application of the rights given in Chapter 2 of the Constitution by the common courts goes beyond constitutional control, I believe that this proposition will ensure integration of the courts in a manner that would lead to the establishment of democratic state, which is highly developed from the legal point of view.