

REAL CONTROL IN THE GEORGIAN SYSTEM OF CONSTITUTIONAL JUSTICE

ABSTRACT

The system of Common Courts becoming subject to the jurisdiction of the Constitutional Court of Georgia has grown particularly relevant. Therefore, the aim of this paper is to provide systemic analysis of the problems within the constitutional control system of Georgia. Specifically, the so called “real” constitutional claim and the prospect of establishing it in Georgia will be discussed. We shall see, how efficient “real” constitutional claim is for the protection of human rights and how hard it is to integrate within the constitutional justice, considering the ongoing transformation of state legal system. The paper will be oriented on both the practice of the Constitutional Court of Georgia, as well as the European approaches.

1. INTRODUCTION

A person has the right to have rights, to be a subject of the rights and all of this is stemming from the fact that he or she is a person and has dignity.¹ Accordingly, human rights create a certain system of norms, the realization of which is a precondition for establishing a state governed by the rule of law. Hence, legal mechanisms that serve for the protection of rights and liberties are of utmost importance.

The constitutional court is a body intended to protect constitutional rights and prevent the branches of the government from unconstitutional interference with the constitution.² It should be noted that preservation of the constitution attains a higher importance in the countries of “young democracy” since the legal systems of such countries undergo constant changes.³

With respect to Georgian constitutional justice system an issue of subjecting common courts to constitutional review has become relevant, *i.e.* the importance of the “real” constitutional com-

¹ J. Maritain, *The Rights of Man and Natural Law*, The Centenary Press, London, 1945, pp. 37-39.

² D. Gegenava, *Constitutional Jurisdiction in Georgia: Main Systemic Issues of Jurisdiction*, Universal Publishing, Tbilisi, 2012, p. 26.

³ G. Kverenchkhiladze, *Legal Defence of the Constitution and the Models of Constitutional Justice*, Caucasian University Publishing, Tbilisi, 2008, p. 73.

plaint and the possibility of implementing it into the Georgian system of constitutional justice.⁴ Thus, the aim of this article is to analyze the challenges of the Georgian model of the system of constitutional control. This article will examine the effectiveness of the “real” constitutional complaint in protection of human rights and assess the complexity of its implementation in the constitutional decision-making process when the country is in the process of transformation. The article will address the experience of the Constitutional Court of Georgia as well as the European standards.

2. CONSTITUTIONAL REVIEW AND THE TYPES OF CONSTITUTIONAL COMPLAINT

The idea of constitutional review has attained special importance after the famous decision of the US Supreme Court – *Marbury v. Madison*.⁵ It was this fact that laid grounds for creation of the mixed constitutional justice system. This means that the Supreme Court conducts the constitutional review. The concept of mixed constitutional control implies that the constitutional control be conducted on a case by case basis (incidental constitutional control).⁶ As for the first model of specific constitutional decision-making – it was first created upon the initiative of Hans Kelsen resulting in creation of the Constitutional Court of Austria in 1920. The Kelsenian model *i.e.* concentrated constitutional decision-making entails an independent⁷ centralized constitutional court, which provides a strong protection for individual rights.⁸ In the system of special constitutional decision-making, the constitutional court is allowed to exercise concrete as well as abstract constitutional review. Concrete constitutional control is always *a posteriori*, which removes the constitutional court from the process of preparation and adoption of legislative acts.⁹

The types of constitutional control and the forms of its execution are closely connected to individual constitutional complaints. Individual constitutional complaint represents one of the ways of referring to the constitutional court, which allows the realization of the interest-based claim-

⁴ In the case of *Apostol v. Georgia*, the European Court of Human Rights has addressed the importance of the Constitutional Court of Georgia and the real constitutional complaints very broadly. It would be no exaggeration to state that this very decision served as principal grounds for initiating a conversation regarding introduction of the real constitutional control. See *Apostol v. Georgia*, Application No. 40765/02, ECtHR, 28 November 2006.

⁵ B. Bojan, Court as Policymakers: Lessons from Transition, Harvard International Law Journal, 2001, pp. 247-248.

⁶ *The Role of the Constitutional Court in the Consolidation of the Rule of Law*, Venice Commission, CDL-STD(1994)010, pp. 3, 19, available at: <https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-STD%281994%29010-e> [accessed 26 November 2019].

⁷ P. Hert, S. Somers, *Principles of National Constitutionalism limiting Individual Claims in Human Rights Law*, Vienna Journal on International Constitutional Law, 2013, p. 17.

⁸ A. Sajó, *Limiting Government, An Introduction to Constitutionalism*, Translation by M. Maisuradze, Cezanne Publishing, Tbilisi, 2003, p. 288.

⁹ Kverenchkhiladze, *supra* 3, p. 74.

related rights of an individual. Within the constitutional decision-making, two types of individual constitutional complaints can be distinguished: **direct** and **indirect**.

- Indirect constitutional complaint supposes the protection of fundamental rights indirectly, through the relevant competent government officials or bodies.¹⁰
- In case of direct constitutional complaint, individuals and legal entities have the right to bring a constitutional complaint before the constitutional court directly whenever there is a violation of rights or a threat of violation thereof.¹¹

Within the scope of abstract and concrete constitutional review, differences might arise within the direct constitutional control. Hence, there are two scenarios:

- In case of abstract constitutional review, anyone can bring a claim before the constitutional court, regardless of whether his or her rights have been violated.¹² The basis for this is the concept of abstract control as such, under which the issue regarding the constitutionality of a norm can be raised at any moment after it enters into force.
- In case of direct constitutional complaint within the context of concrete constitutional review, a person can only bring a claim before the court if his or her rights have been violated, or there is a risk of violation.¹³

Within the context of concrete constitutional control, direct constitutional complaints can further be divided into three sub-categories:

- Constitutional revision – only decisions of the courts of final instance can be appealed before the constitutional court.¹⁴
- Normative constitutional complaint – persons can only bring claims regarding normative acts.¹⁵

¹⁰ *Study on Individual Access to Constitutional Justice*, European Commission For Democracy through Law, Venice Commission, CDL-AD(2010)039rev., paras. 3, 56, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)039rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)039rev-e) [last accessed 26 November 2019].

¹¹ See *ibid*, paras. 53-54, 75-77, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)039rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)039rev-e) [last accessed 26 November 2019].

¹² L. Sólyom, *Constitutional Justice - Some Comparative Remarks*, Venice Commission, CDL-JU(2003)30, p. 3. see. [https://www.venice.coe.int/webforms/documents/?pdf=CDL-JU\(2003\)030-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-JU(2003)030-e) [last accessed 4 December 2019].

¹³ *Study on Individual Access to Constitutional Justice*, European Commission For Democracy through Law, Venice Commission, CDL-AD(2010)039rev., I.1.2, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)039rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)039rev-e) [last accessed 26 November 2019].

¹⁴ *Comparative Overview of European Systems of Constitutional Justice*, 5 Vienna Journal on International Constitutional Law, 2011, p. 166.

¹⁵ *Study on Individual Access to Constitutional Justice*, European Commission For Democracy through Law, Venice Commission, CDL-AD(2010)039rev, para. 77, available at:

- Real/full constitutional complaint – acts of all the branches of the government can be brought before the constitutional court (based on the principle of subsidiarity).¹⁶

The idea of real constitutional complaint forms a part of the importance of the real constitutional control. Hence it is important to assess the scope of rights that the real constitutional control grants to the constitutional court and physical persons respectively. It is also necessary to examine to what extent the system of common courts can be subjected to the constitutional control. Firstly, it should be noted that addressing the constitutional court with real constitutional complaint does not mean assessing the grounds of the case.¹⁷ Constitutional control of the common courts is only conducted with respect to human rights.¹⁸ This is an important reservation insofar as it handles the limitation of the constitutional review over the decisions of the common courts. The establishment of real constitutional control is linked to a fundamental doctrinal problem as to what extent the constitutional court should interfere within the performance of immanent functions of the common courts. Accordingly, I believe that one of the directions is conducting constitutional review of the decisions of common courts in the context of human rights.

3. GEORGIAN MODEL OF CONSTITUTIONAL CONTROL – RELEVANCE OF THE INDIVIDUAL CONSTITUTIONAL COMPLAINT

Georgian constitutional justice is characterized as a concrete constitutional control.¹⁹ This is realized by the procedure started based upon constitutional submissions or constitutional complaints. Individual constitutional complaint is the most important instrument that serves the protection of human rights.²⁰ Accordingly the Georgian model of constitutional justice prescribes the possibility of protecting rights against potential breaches, which does not prevent the introduction of real constitutional control.

Challenges of effectiveness of the Georgian model of constitutional complaint can be raised as a consequence of several issues. In particular, every person can challenge the constitutionality of the law even if he or she is not directly affected by the law (provided there is potential threat).

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)039rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)039rev-e) [last accessed November 26, 2019].

¹⁶ See *ibid*, para. 80, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)039rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)039rev-e) [last accessed November 26, 2019].

¹⁷ S. Banić, *Full Individual Access to the Constitutional Court as an Effective Remedy for Human Right Protection*, Venice Commission, CDL-JU(2015)011, p. 5, available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-JU\(2015\)011-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-JU(2015)011-e) [last accessed December 4, 2019].

¹⁸ *Study on Individual Access to Constitutional Justice*, European Commission For Democracy through Law, Venice Commission, CDL-AD(2010)039rev, para. 81. available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)039rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)039rev-e) [last accessed December 3, 2019].

¹⁹ See *Apostol v. Georgia* supra 4.

²⁰ M. Fremuth, *Constitutionalism and Constitutional Litigation in Germany and Beyond the State – A European Perspective*, *Duquesne Law Review*, Vol.49, 2011, p. 385.

However, an individual is deprived of the ability to challenge the decisions of courts and other public bodies which directly affect their situation.²¹ Hence, the system of common courts in Georgia is not subjected to constitutional control in the area of human rights. In addition, this is coupled with the lack of conversation between judges,²² which can also be deduced based on the small amount of constitutional submissions. According to official data, as of 2018, overall 80 constitutional submissions have been brought before the constitutional court.²³ Due to these reasons, it is necessary to introduce mechanisms, which would promote the establishment of judicial interaction and increase the possibility of protecting human rights. For the efficiency of legal system, it is important to create and use an interactive potential, which excludes the mere legalistic division of the legal system (*erga omnes effect*), in particular a “rather uncomfortable legal position” arises from the lack of “confrontation” and discussions among the courts.²⁴ Naturally, the above-mentioned does not imply negative approaches and it aims to set forth limitations for definitions by the courts. Furthermore, the analysis of international practice suggests that states are creating the mechanisms for “obligatory dialogue” in order to eliminate the formal borders existing between separated constitutional and common courts. In this regard, the real constitutional control is an important mechanism, which in a way obliges the courts to exchange experiences and communicate with each other insofar as in this case, courts will have to examine the standards established by one another. The ultimate goal of this is to increase the degree of the protection of human rights. The aforementioned is not the sole challenge the Constitutional Court of Georgia is facing. Another important problem is that declaring a norm unconstitutional does not result in annulment of the judgments delivered based on such norms. This means that the Constitutional Court does not have the competence to redress the issues that are caused by action or inaction of common courts.²⁵ Such an arrangement is directly linked to the problem of execution of the judgments of the Constitutional Court. For instance, the European Court of Human Rights deemed the Hungarian model of abstract control inefficient given that the Constitutional Court could only assess the constitutionality *in abstracto*, without the possibility of annulling or amending the measures taken with regard to an individual. In case of *Apostol v. Georgia*, the Court offered introduction of the law similar to the one existing in German legislation as a way of the solution for this problem. Namely, the Federal Constitutional Court is entitled to identify the subject responsible for execution of the judgment and, under specific circumstances, even indicate the method of execution.²⁶ Such an arrangement attains an important significance in the context of Georgian legal reality. The Constitutional Court may

²¹ *Apostol v. Georgia*, supra 4, para. 40.

²² M. Claes, *Negotiating Constitutional Identity or Whose Identity is It Anyway?* in: *Constitutional Conversations in Europe*, Intersentia, Cambridge, 2012, pp. 222-230.

²³ See <http://old.constcourt.ge/ge/legal-acts/statistics> [last accessed on December 20, 2019].

²⁴ J. Gerards, *The Pilot Judgment Procedure Before the European Court of Human Rights as an Instrument for Dialogue*, in: *Constitutional Conversations in Europe*, Intersentia, Cambridge, 2012, pp. 370-372

²⁵ *Apostol v. Georgia* supra 4 para. 42.

²⁶ Supra 4, para. 30.

declare the legal norm constitutional, however declare its specific normative content incompatible with the Constitution. Although the Court does not have an authority to issue separate judgments aiming to offer definitions, in case of judgments regarding the normative content it can address the issue of authenticity of the norm.²⁷ Unfortunately, “attention is not paid” to such situations and government bodies continue to apply the normative content existing before the judgment.²⁸ Besides, when we are giving the Constitutional Court the competency to conduct oversight over common courts as well as public agencies through the real individual constitutional complaint, it is also necessary to introduce effective means for the exercise of such oversight. Accordingly, the Court has to determine who is responsible for execution on a case by case basis.²⁹ Hence, would it not be justified to create a separate department of the Constitutional Court responsible for the execution of judgments? The grounds for such an approach can also be found in Georgian legislation. In particular, it is noteworthy that one of the most important functions of the Secretary of the Constitutional Court is to “take measures designated for the execution of the judgments of the Court and provide the Plenum with a report regarding execution of judgments once a month”.³⁰ It would make sense to link the creation of a separate supervisory department to this specific function. The existence of effective mechanisms for control imply the possibility of one branch to participate in the performance of tasks by another branch and its capacity to influence different stages of execution of judgments.³¹ On one hand, creation of the supervisory department would facilitate the process of interaction between the Constitutional Court and other bodies and, most importantly, it would serve as an important guarantee for the execution of judgments. On the other hand, introduction of such a mechanism is linked with the legitimacy of the Constitutional Court.³² Attention should be paid to the issue of distinguishing functions and competences, so that the lack of clarity does not serve as grounds for unconstitutionality. However, in the end, introduction of the real constitutional control as well as the creation of a separate department responsible for the oversight of the execution of judgments is an issue of legal policy.

The Georgian model of constitutional complaint has some advantages in comparison with the real constitutional complaint. First of all, judicial overload might occur in the latter case. Besides, today there is no competition among the courts when it comes to interpretation regarding

²⁷ Gegenava, *supra* 2, p. 75.

²⁸ Information on Constitutional Justice in Georgia – Constitutional Court of Georgia, 2017, p.33 see. <http://old.constcourt.ge/uploads/other/3/3841.pdf> [last accessed on December 20, 2019].

²⁹ For the discussion regarding different methods of execution of judgments, see S. Bross, *Reflections on the Execution of Constitutional Court Decisions in a Democratic State under the Rule of Law on the Basis of the Constitutional Law Situation in the Federal Republic of Germany*, Venice Commission, CDL-JU(2009)001, p. 4, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-JU\(2009\)001-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-JU(2009)001-e) [last accessed 29 November 2019].

³⁰ Article 14, Organic Law of Georgia “On Constitutional Proceedings”, 31 January 1996, 001, 27.02.1996.

³¹ Sajo *supra* 6, p. 126.

³² W. Sadurski, *Post-Communist Constitutional Courts in Search of Political Legitimacy*, European University Institute, 2001, p. 21.

the constitutionality of a norm. Nevertheless, there are strong arguments in favor of the real constitutional complaints. I believe that introduction of the real constitutional complaint will facilitate the process of the conversation between the Constitutional Court and the common courts, which will promote judicial law-making. Hence, there is an expectation that common courts will aim to introduce higher standards for the protection of human rights. Moreover, as demonstrated by the case law of the ECtHR, in countries with real constitutional complaints, the amount of cases brought against them before the Court is significantly lower.³³ Real constitutional complaint is particularly popular in the Eastern Europe³⁴ and the ECtHR advocates for such type of complaints as an additional mechanism for the protection of human rights.³⁵

Clearly, there is no universally accepted model of individual constitutional complaint. Moreover, accepting this instrument of the protection of human rights as the sole existing alternative contradicts the principle of legal state. Legislators should identify, which model of constitutional complaint would be more efficient in the country based on regulations existing therein as well as its legal reality. Accordingly, each position has its pros and cons. However, it is becoming clear that the real constitutional control guarantees a higher standard for the protection of human rights as compared to the model which does not offer any oversight of the decisions of common courts by the Constitutional Court.

4. THE POSSIBILITY OF IMPLEMENTING THE “REAL” CONSTITUTIONAL CONTROL IN THE GEORGIAN SYSTEM OF CONSTITUTIONAL JUSTICE

In the countries of so-called “new democracy” implementing real constitutional control to the system of constitutional justice is a difficult task. Georgia, as a state in the process of transformation, is facing serious challenges in this regard. Based on the Georgian legal reality, the necessity to purposefully broaden the scope of the authority of the court is based on the unconditional fact that the courts are obliged to consider the scope of the values of legal regulations while interpreting and applying laws. If the court does not pay due regard to it, it violates stipulations of the basic law and it is necessary to control the decisions taken by the court. Such a control should be conducted by a constitutional court.³⁶

³³ P. Paczolay, *Introduction to the Report of the Venice Commission on Individual Access to Constitutional Justice*, Venice Commission, CDL-JU(2013)003, p. 2, available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-JU\(2013\)003-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-JU(2013)003-e) [last accessed 4 December 2019].

³⁴ E. Hasani, P. Paczolay, M. Riegner, *Constitutional Justice in Southeast Europe: constitutional courts in Kosovo, Serbia, Albania and Hungary between ordinary judiciaries and the European Court of Human Rights*, Nomos, Eschborn and GIZ, Germany, 2012, p. 13.

³⁵ *Apostol v. Georgia* supra 4, paras. 41-71.

³⁶ Bundesverfassungsgericht [BVerfG – Federal Constitutional Court], Case No. 1 BvR 400/51, BVERFGE 7, 198 [207], Jan. 15, 1958.

The possibility of implementing real control was being considered in 2013 and it became relevant in 2016 as well. The analysis of legislative bills allows us to say that the initiators of the bills have suggested several innovative ideas. For example, such as the issue of admissibility of constitutional complaints regarding individual acts and final decisions of the common courts and applicable exceptions; a different division of the functions of the judges of the constitutional court and, in particular, changes to the duties of the President of the court. However, there are some challenges as well, namely the possibility of considering a case by a single judge following the simplified procedure, the ambiguity in distinguishing the functions of judges, as well as the issue of compensation for incurred harm. Accordingly, the reason for rejecting the real constitutional control was the impossibility to agree on the aforementioned and other issues. However, nevertheless, the main reason for the failure of the Commission was the fact that the country's legal system was not prepared for relevant changes.

With respect to introduction of the real constitutional control, drawing the line of distinction between the constitutional control and a general legal control of norms is always a subject of the dispute. The difficulty of clear definition of the intensity of the constitutional review is stemming from the “caution” of states and it is necessary to elaborate such an arrangement that would avoid politicization of the court (with respect to the qualitative issues of the constitutional control)³⁷ and substitution of the functions of the legislative branch. Accordingly, it is the legislative amendments that should introduce the real constitutional control, although this does not imply that the body conducting constitutional review should be deprived of the ability to make political decisions altogether, rather it is important to define as to what extent this will be done and to what results it will lead.³⁸ This issue can be solved by identifying a group of people from which the constitutional control will accept real individual constitutional complaints (e.g. the “amparo” procedure in Spain).³⁹ However, it is difficult to distinguish ordinary wrongdoings from human rights violations as well as establishing the criteria that would serve as grounds for reexamining judgments of the court of the last instance. Prior definition of this issue is impossible, because it is the constitutional court that should define the guiding principles through its case law, which is a quite difficult task for the countries of “new democracy”. The constitutional court should elaborate a self-restraining mechanism so that the judicial overload as well as the “legal war” on interpretation of constitutionality of norms is avoided.⁴⁰ Introduction of such self-restraint as well as of real control is linked to legislative changes. For integration of the real

³⁷ E. Mclean, *The Most Dangerous Branch: The Judicial Assault on American Culture*, University Press of America, 2008, pp. 1-16.

³⁸ A. Miller, *The Supreme Court and American Capitalism*, Free Press, New York, 1968, p. 5.

³⁹ See European Commission for Democracy through Law, *Brief on the remedy for the protection of individual rights before the Spanish Constitutional Court (recurso de amparo)*, CDL-JU(2015)009, 13 May 2015, available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-JU\(2015\)009-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-JU(2015)009-e) [last accessed 29 November 2019].

⁴⁰ *Study on Individual Access to Constitutional Justice*, European Commission For Democracy through Law, Venice Commission, CDL-AD(2010)039rev, para. 211, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)039rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)039rev-e) [last accessed 26 November 2019].

control into the Georgian system of constitutional justice, it is necessary to amend the law so that it includes the authority of the constitutional court to consider the constitutionality of normative and individual acts with respect to the Second Chapter of the Constitution when all domestic remedies have been exhausted (principle of subsidiarity).⁴¹ The principle of subsidiarity creates a certain precondition for the admissibility of constitutional complaints and its substance is to be determined by states themselves. It is important to consider the experience of European states with respect to subsidiary nature of individual constitutional complaints, which rejects the use of the subsidiarity principle in cases where it can result in irreparable violation of human rights.

At the same time, it is important to enact a legal regulation, according to which the constitutional court will not be competent to adjudicate upon the constitutionality of the judicial judgments as such, whenever the applicant is claiming to declare only a certain part of the judgment unconstitutional. However, exceptions might be allowed when a part of the judgment the constitutionality of which is not disputed will lose legal effect after declaring the disputed part of the judgment unconstitutional. In addition, exceptions can be allowed, when the disputed part of the judgment is by substance connected to the part the constitutionality of which is not disputed by the party to a case, but where delivering a judgment without considering it would be impossible.

It is also important to make a reservation under which, in case of declaring the final judgment of common courts unconstitutional, declaring the judgment void and returning it to the court which issued the judgment for reconsideration shall follow. In such cases, judges, who previously participated in the hearing of the case should not be allowed to sit on the retrial. Due to this fact and for the purposes of efficiency, it would be reasonable to make a separate department in the system of common courts which would be responsible for reconsidering the judgments that have been declared unconstitutional. This does not imply the existence of an additional instance, but rather it is necessary to make structural adjustments in common courts to serve the specificities of the real control. It should be noted that the Constitutional Court adheres to the principle *iura novit curia* and thus the issue of constitutional control over the common courts has to do with the scope/clarity of definitions regarding fundamental rights. The real control most definitely implies the existence of such mechanisms and means that express the respect towards administration of justice by common courts.⁴² Upon the introduction of the real control, the Constitutional Court will participate in the work of common courts and complements (not substitutes) the functions of the Supreme Court.

⁴¹ Such a model can be found in the constitutional justice system of Germany, Croatia, Hungary, Slovakia and Portugal. *Co-operation of Constitutional Courts in Europe Current Situation and Perspectives*, Venice Commission, CDL-JU(2014)003. available at: <https://www.venice.coe.int/files/2014-05-02-CECC-e.pdf> [last accessed December 5, 2019]

⁴² *Study on Individual Access to Constitutional Justice*, European Commission For Democracy through Law, Venice Commission, CDL-AD(2010)039rev., para. 211, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)039rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)039rev-e) [last accessed November 29, 2019].

In addition, real constitutional control would require increasing the number of the Justices of the Constitutional Court insofar that the increased number of constitutional complaints will require relevant organization of the Court. Taking this into account, it is suggested that smaller chambers⁴³ are created with the aim to assess the formal criteria and reasoning of real individual complaints. References to the increase of the number of judges can also be found in legislative bills of 2013 and 2016. Creation of such a structural division is aimed to achieving balance in the Constitutional Court. For the accomplishment of the same purpose, introduction of certain consecutiveness upon the distribution of incoming claims can also be considered. If the said group of judges deems it necessary, they should be able to refer to the Plenum and request that the case be considered by it. The possibility of such a motion derives from the difficulty of defining the intensity of the control and the legal criteria, which is the biggest challenge during the introduction of real constitutional control. Besides, for the purposes of ensuring the flexibility of contentious proceedings, we could also consider the possibility of creating the unit of assistants, given that the increased amount of constitutional complaints requires not only increasing the number of judges but also formation of relevant structural units of the Staff of the Constitutional Court. This would be another mechanism that could serve as a tool for avoiding judicial overload. In addition, it would be useful to introduce other mechanisms that contributes to avoiding the overload of the Court. For example, it could be possible to consider a constitutional complaint without an oral hearing and to deliver judgments following the simplified procedure whenever a similar case has already been decided by the Constitutional Court.

However, all of this is not sufficient for ensuring the constitutional order that individual constitutional complaint procedure is aiming to establish. In particular, the right of individuals and legal persons to bring a real constitutional complaint before the court is also associated with certain obligations. It is prohibited to use this right in bad faith. It is important to adopt the criteria for good faith action since this is what serves as grounds for defining the limits of such right. A relevant method of bearing responsibility should be adopted to prevent the abuse of the right. In addition, the exercise of real constitutional control should not obstruct the access to the court. In any case, given the self-contained nature of the constitutional justice, it is necessary to establish a procedure, which would create grounds for timely and efficient consideration of real constitutional complaints. In order to achieve this, it is important to establish reasonable time-frames which, together with other procedural regulations, will serve as means for avoiding the prolongation of the consideration of complaints.

5. CONCLUSION

As a body protecting fundamental rights, the Constitutional Court should be given the possibility to create long-lasting and effective means for protecting the rights through real control.

⁴³ Ibid, para. 225.

Evaluation of the value of events and aspiration for institutional development serve as grounds for compliance of normative reality with ongoing processes. For this reason, the Constitutional Court has addressed the issue of introducing the real constitutional control several times, but finally this model of individual constitutional complaint remained to be an unaccomplished goal. Nevertheless, the lack of dialogue between the judges as well as the lack of constitutional submissions indicates the necessity of introducing the real constitutional control. Subjecting common courts to constitutional review guarantees the effectiveness of domestic mechanisms for the protection of human rights and the creation of the constitutional system which corresponds with the needs of democracy. All of this will be reflected in the self-control of the system of common courts with respect to application of laws, as well as in the completion of doctrinal views and the creation of preventive functions. In this case, the work of the Constitutional Court only complements the functioning of common courts and does not lead to the assessment of the appropriateness of the decisions; this way, the Supreme Court and the Constitutional Court divide compatible functions.

Introduction of the real constitutional control needs fundamental legislative changes as well as the preparedness of the Constitutional Court. This has to do with lengthy and complicated procedures. Given that there is no universal system for the assessment of dogmatic-legal criteria, it is necessary for the Constitutional Court to address this issue through its case law. The legislature defines a normative framework and the constitutional court creates legal dogmatics. For the purpose of substantial or qualitative aspects of the constitutional control, the following should be defined: rights and duties of judges; the issues related to reorganization of the courts (increase of the number of judges; creation of the division in charge of the process of execution or creation of the department of assistants). In addition, for introduction of the real constitutional control, the duty of the Constitutional Court to create self-limiting mechanisms for the purposes of avoiding judicial overload is important. For example, a principle of subsidiarity can be introduced. In this regard, it is important to consider and act in accordance with the experience of European countries. The necessity to establish certain exceptions is also significant, so that the clear definition of legal norms does not lead to excessive robustness. The introduction of real constitutional control is a crucial and very difficult process, which is accompanied by the necessity to regulate important doctrinal issues.

Identifying the specificities of the real constitutional control makes the assessment of its characteristic difficulties and benefits possible. For this reason, this article addressed the pros and cons of introducing the real constitutional control to the Georgian system of constitutional justice, relevant necessary legislative changes and potential novelties have been identified. Finally, it should be addressed that there is no universally recognized model of constitutional control and for defining each of the models it is necessary to consider the experiences and legal reality of each country.