INFORMATION ON CONSTITUTIONAL JUSTICE IN GEORGIA

2017

საქართველოს საკონსტიტუციო სასამართლო

Table of Contents

Introduction 3
1. Overview of the Jurisprudence of the Constitutional Court of Georgia 7
I. Court Acts Adopted at the Stage of Preliminary Session 7
i. Requirement of Reasoning in Constitutional Complaints and Referrals 7
ii. Submission of Constitutional Complaint by Person with Standing 14
iii. Jurisdiction of the Constitutional Court of Georgia 20
iv. All the Issues Raised in the Constitutional Complaint or Referral Are Already Decided by the Constitutional Court 24
v. Subsidiarity 25
II. Provisions Overruling Judgements 26
i. The Grand Chamber 27
ii. The First Chamber 33
iii. The Second Chamber 37
III. Judgements 41
i. Judgements of the Grand Chamber 41
ii. Judgements of the First Chamber 57
iii. Judgements of the Second Chamber 71
IV. Termination of Proceedings 80
i. Termination of Proceedings on the Ground of Withdrawal of the Claim 81
ii. Termination of Proceedings on the Ground of Repeal or Invalidation of the Disputed Legal Act 82
iii. Termination of Proceedings due to Death of the Complainant 84
2. International Relations and Other Activities 86
3. Major Directions of Strengthening of Constitutional Justice 92
4. Statistical Overview of the Court's Activities 100

Introduction

The Constitutional Court is the guarantor of supremacy of the Constitution and protection of constitutional rights and freedoms of individual. Therefore it has a crucial role in everyday life of a democratic state guided by recognition and protection of fundamental human rights. Interference and restriction of fundamental human rights in the process of governance, is often an unavoidable, inevitable reality. However, interference in fundamental rights should take place in the manner and according to the due standards set forth in the Constitution. Each branch of the government is obligated to respect and protect the Constitution of Georgia. Due compliance with the Constitution is an important precondition of democratic development of the country with the right values. The Constitutional Court of Georgia is the guarantor of the system of constitutional values; it interprets constitutional principles and provisions, in order the ever changing and developing legal processes to come within the constitutional order and human rights to be protected.

The dynamic process of interpretation of the Constitution of Georgia by the Constitutional Court poses various legal challenges; the case law of the Constitutional Court is developing year by year; the scopes and meaning of fundamental rights are reconsidered and important constitutional standards are set, in order to make possible comprehensive and irreversible protection of human rights. Protection of supremacy of the Constitution requires coordinated operation of all branches of the government. The crucial precondition of coordinated work is the constant communication among the branches with regard to the activities undertaken and the challenges present within their respective areas of competence.

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 about the constitutional justice in Georgia to the President of Georgia, the Parliament of Georgia and the Supreme Court of Georgia once a year.

The present document provides the summary of the activities undertaken by the Constitutional Court of Georgia in 2017, activities carried out in the sphere of international relations, overview and analysis of the important legal acts adopted throughout the year. It also describes the important directions of strengthening of constitutional justice that were identified in the process of constitutional adjudication. In view of the information contained herein, the present document will serve the practical needs not only of legislative, executive and judicial branches, but it will also be helpful for mass media outlets, academic circles, NGOs, students and other persons interested in the constitutional law.

The last year, 2017 was significant and productive for the Constitutional Court of Georgia from the perspective of its main activities, that is implementation of constitutional review, as well as, of the activities undertaken at the international level. Firstly, it should be noted, that the number of constitutional complaints filed with the Constitutional Court has significantly increased, which to certain extent shows the rising of awareness about constitutional review and of the trust of public in it. There were 423 constitutional complaints and referrals registered in the Court throughout the last year, which substantially exceeds the number of complaints registered in the previous year. Trend of increasing number of complaints makes it particularly important, that the Constitutional Court be able to carry out adjudication in timely and effective manner.

In 2017, the important challenge for the Constitutional Court was to optimize and adjust its activities to the increasing demand of public for constitutional review. Protection of human rights and fundamental freedoms, as well as constitutional supremacy by the Constitutional Court is directly linked to timely and effective manner of adjudication. At the same time, judgements adopted by the Court should be duly reasoned and should set important standards for the protection of fundamental rights. In 2017, the Constitutional Court managed to finalize the proceedings with regard to 115 constitutional complaints. In view of the number of finalized cases and adopted judgements, 2017 was an uprecedented year. However, at the end of the year, there were still pending 471 constitutional complaints before the Constitutional Court and provision of timely and competent adjudication in these cases poses important challenge to the Court. In view of the role and function of constitutional review, the Constitutional Court is oriented at provision of the most effective and fast adjudication, which will positively influence the degree of human rights protection in the country.

It is important for the Constitutional Court, that not only reasoned judgements be adopted, but that the public appropriately and adequately understand the legal acts adopted by it. It is noteworthy in this regard, that active discussion and legal analysis of the Constitutional Court's judgements at the public lectures, discussions, and other mediums were taking place throughout the whole year. The Constitutional Court was actively involved in these activities, through direct participation of judges and staff members and other forms of engagement. Such discussions and exchange of views significantly help to inform the public at large about the judgements adopted by the Constitutional Court. Moreover, such activities allow explaining the solutions or standards provided in the Court's judgements, which makes it easier for the government, as well as public to understand them. No less important is the channeling of critical opinions and remarks through these mediums, which at the end of the day, contributes to the development of constitutional review.

International activities that took place during the last year are worth mentioning, including the XVII Congress of the European Constitutional Courts on "the Role of Constitutional Courts in Upholding and Applying of Constitutional Principles". The Constitutional Court of Georgia, as the chair of the Conference of European Constitutional Courts, hosted the Congress. Delegates from the constitutional courts and similar institutions from over 40 countries participated in the Congress together with the invited representatives of the legislative, executive and judicial branches of the government and diplomatic corps. This Congress was an important event for the Constitutional Court of Georgia, as it provided the platform for the fruitful cooperation between the judges of the Constitutional Court of Georgia and representatives of constitutional courts of various European countries. The awareness and role of the Constitutional Court of Georgia has increased further at the international level.

This document presents summary and analysis of the activities undertaken by the Constitutional Court in 2017. It discusses the landmark judgements adopted by the Constitutional Court and the significant aspects discerned throughout the year, as it is important that the society and government be informed about them. To protect the constitutional order, it is important that every branch of government work in a consistent and coordinated manner. Therefore, the Constitutional Court considers, that provision of detailed information about the workings of the Court in this way will help the fruitful cooperation between the legislative, executive and judicial branches to fulfill the common goal of unconditional adherence to the Constitution of Georgia.

This document provides an overview of the case law of the Constitutional Court of Georgia of 2017 (Chapter I). It identifies the trends emerging throughout the year with regard to the acts adopted at the stage of preliminary session, provides detailed analysis of the issues related to requirement of reasoning in the constitutional complaints and referrals and grounds of their non-admissibility. The overview also provides analysis of the important legal acts adopted by the Constitutional Court, including the landmark judgements adopted by the Chambers and the Grand Chamber of the Court and rulings with regard to the overruling provisions. Reviewing the legal acts of the Constitutional Court, the document is focused on important interpretations in the case law of the Court and changes taking place in practice. It also discusses the grounds of termination of constitutional proceedings in the Constitutional Court and provides information about constitutional complaints and referrals, proceedings on which were terminated during the last year on these grounds.

The present document also contains information about the international activities and events of the Constitutional Court undertaken throughout the last year (Chapter II). In this

respect, the document reviews various activities of the Court at the international conferences and discussions, XVII Congress of the European Constitutional Courts that took place in Batumi and other events related to international relations.

As the present document has practical value and it contains information about the protection of constitutional justice, the Constitutional Court considers it particularly important to highlight the directions to strengthen the constitutional justice, which were identified in 2017 (Chapter III). This part of the document discusses various issues related to the problematic aspects of reasoning in constitutional complaints, as well as actions undertaken by the respondent party – the relevant state authority.

The document also provides statistical data on the registered complaints, adjudicated cases, adopted judgements and other issues related to implementation of constitutional review by the Constitutional Court (Chapter IV).

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

I. Court Acts Adopted at the Stage of Preliminary Session

Deciding the issue of admission of a complaint or referral submitted to the Constitutional Court for consideration on merits has practical importance, as it determines to certain extent the effectiveness and speediness of adjudication provided by the Court. Consideration on merits of the complaint by the Constitutional Court is done with the limited human and material resources. Only optimal usage of these resources will allow proper performance of the role and mandate of the Constitutional Court. Lately, the Constitutional Court has seen the significant increase in the number of applicants to the Constitutional Court. In view of this trend, it is important to prevent the overloading of the Court with ill-founded and unreasoned complaints. The criteria of admissibility of constitutional complaints and referrals for consideration on merits present important guarantee for this. The legislation and related case law of the Constitutional Court state the procedural and substantive requirements, which should be met in order a submitted constitutional complaint to be admitted for consideration on merits.

i. Requirement of Reasoning in Constitutional Complaints and Referrals

Among the preconditions of admission of constitutional complaints and referrals for consideration on merits, it is important to highlight the requirement of reasoning in complaints, which consists of several criteria. Under Article 31(2) of the Organic Law of Georgia on Constitutional Court of Georgia, constitutional complaint should be reasoned. A complainant has to bring 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. Lack of reasoning in a 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-wise; b. It is not substantiated that the disputed provision falls within the ambit of the constitutional provision, which the provision is allegedly incompatible with.

a) The reasoning provided in the complaint does not apply to the disputed provision content-wise

A constitutional complaint or referral is not admitted for consideration on merits on this ground when the complainant has incorrect perception of the content of disputed provision and in fact, it cannot be interpreted and applied with the content that the complainant finds problematic. In such case, it is impossible for the complainant to substantiate unconstitutionality of the actual content of the disputed provision. Hence the complaint is declared unfounded.

a.a) Reasoning provided by complainant does not apply to the disputed provision

Analysis of the case law of the Constitutional Court clarifies that incorrect perception of the disputed provision by complainant is a frequent problem. There follows discussion of the specific constitutional complaints, which were not admitted for consideration on merits on this very ground.

The complainants in the complaint N870[1] challenged Article 11(1)(d) of the Law of Georgia on Legal Aid. They asserted that based on the disputed provision, the Legal Aid Council could set such standards for quality evaluation of performance of a lawyer, which would ignore the confidential relationship between lawyer and client and would obligate the lawyer to disclose the information about the defense strategy and obtained evidence. The complainants asserted, that all the above-mentioned restricted the freedom of activities of lawyer and other fundamental rights. In this respect, the Constitutional Court interpreted, that the disputed provision provided for a general power of the Legal Aid Council, to approve the rule and criteria for evaluation of consultation and legal aid provided by the legal aid service based on the proposal of the Director of the Legal Aid Service. The disputed provision did not specify any criteria that would be used for evaluation of performance of a lawyer. The arguments brought by the complainants did not address the disputed rule, but instead the legislative regulation, which specified the criteria for evaluation of lawyer's performance. As the arguments provided by the complainants did not apply to the disputed provision, while the provisions, which caused the restriction of rights of complainants, were not challenged, the Constitutional Court did not admit the constitutional complaint for consideration of merits.

[1] Ruling №1/4/870 of the Constitutional Court of Georgia of 7 April, 2017 in the case of "Citizens of Georgia – Imeda Karkashadze, Mevlud Janjgava, Khatuna Chkhaidze and other v. The Parliament of Georgia".

a.b) The disputed provision does not have the challenged normative content

In the constitutional complaint N739[2], the complainant disputed, among others, constitutionality of Paragraph 2 of the note to Article 158 of the Criminal Code of Georgia. Article 158 of the Criminal Code of Georgia provides for punishment of an act of unwarranted recording or surveillance of private conversation or communication. However, Paragraph 2 of the note to this Article, which was challenged, exempted a person committing the mentioned criminal act from criminal liability, in case s/he would present the information thus obtained to the investigation authorities.

The complainant challenged the normative content of the disputed provision, which allowed the use of recording obtained in violation of the Constitution in the criminal case as evidence. In this respect, the Constitutional Court interpreted, that the disputed provision provided the ground for exemption from criminal liability of a person committing a specific crime and had no connection to the issue of admissibility of unlawfully obtained information as evidence. The Constitutional Court decided, that the disputed provision did not have the normative content, challenged by the complainant, which served as ground for non-admissibility of this part of his claims for consideration on merits.

a.g) The disputed provision is not restrictive by its nature

Challenging of the provision, which does not contain the restriction of the right named by the complainant, indicates the incorrect perception of the content of the disputed provision and the restriction entailed by it. Often complainants challenge the rule, which sets forth an entitlement and has no restrictive effect on rights.

Complainant in the constitutional complaint N1232[3] challenged the provision of the Law of Georgia on State Fee. Under the disputed provision, natural persons, whose court dispute is related to the payment of salary based on the employment relationship or to other claim of remuneration for work, are exempted from the obligation to pay state fee in common courts. The complainant asserted, that content of the disputed provision, which obliged a person to pay state fee, in case of appeal against the judgement in employment dispute and in case of dispute related to social welfare, was unconstitutional. In view of the content of the challenged provision the Constitutional Court declared that the rule only provided exemption of certain categories of persons from the state fee; it did not provide any regulation on who should pay

[2] Ruling №2/17/739 of the Constitutional Court of Georgia of 28 December, 2017 in the case of "Citizen of Georgia Erasti Jakobia v. The Parliament of Georgia".

[3] Ruling №1/11/1232 of the Constitutional Court of Georgia of 12 July, 2017 in the case of "Citizens of Georgia, Ivane Petriashvili and Elene Makharashvili v. The Parliament of Georgia".

or for which types of complaints state fee should be paid. Therefore, the Court decided, that the disputed provision set forth an exception to the general rule of payment of state fee and provided an entitlement. In view of these reasons, the Constitutional Court did not admit the complaint for consideration on merits.

On the same ground, the Constitutional Court considered unfounded the constitutional complaint N824[4], where complainant challenged constitutionality of the following words of Article 206(10) of the Criminal Procedure Code of Georgia: "In case of arrest of a wanted accused abroad, s/he should be presented to the appropriate court within 48 hours from his arrival to the place of investigation in Georgia." The complainant asserted, that the challenged provision set forth obligation of bringing to the court of those persons who were extradited at the stage of investigation, thereby allowing not to take to the court those persons who were extradited after the stage of investigation. The Constitutional Court explained, that the disputed provision did not contain any preconditions, in case of which person would not be taken to the court. The Court decided, that the fact of non-applicability of a provision to certain relationships does not in itself lead to restriction of certain rights. The disputed rule provided an entitlement to those persons, to who it applied. In view of these reasons, the complaint was not admitted for consideration on merits.

b) 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 substance and scope. 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.

It is often the case, that the complainant indicates the problem stemming from a specific provision and considers it to violate the right enshrined in the Constitution, however s/he incorrectly understands the content of that right. This can lead to the problem, where claims stated in the complaint do not apply to the constitutional provision, against which it should

[4]Ruling №1/23/824 of the Constitutional Court of Georgia of 28 December, 2017 in the case of "Citizen of Georgia, Giorgi Dgebuadze v. The Parliament of Georgia".

be checked. For full realization of complainant's rights, as well as for the protection of constitutional order, it is necessary to identify correctly the fundamental right, which is actually restricted by the disputed provision. In this respect, it is particularly important, that the complainant correctly determine the content of a disputed provision and the restriction entailed by it and to raise the claim of unconstitutionality of a disputed provision with to the relevant Article of the Constitution, in order to have the restriction of a right evaluated through the appropriate, constitutional standard.

Despite the fact, that in recent years, the case law of the constitutional Court provided explication of scopes of various rights, still it is often the case, that the disputed provision and arguments of the complainant do not apply to the fundamental rights named in the complaint.

In the constitutional complaint no. 759[5] the complainants referred to the fact, that they were required to be members of the self-government of the university, in order to be elected to the academic council and faculty council of the high educational institution. This, in their opinion, restricted their right to freedom of association (Article 26 of the Constitution), constitutional principle of equality before law (Article 14 of the Constitution), right to access to public office (Article 29 of the Constitution).

According to the interpretation of the Constitutional Court, any student was entitled to express their will and take part in the elections of the student self-government, to become its member or on the contrary, not to participate in its activities. As the disputed provisions did not coerce the complainants to become members of student self-government and did not lead to restriction of negative freedom of association, the Constitutional Court decided, that the disputed provisions did no fall within the ambit of the constitutional right of association.

According to the well-established case law of the Constitutional Court, Article 29 of the Constitution enshrines the rights to take the position and work in public office. Thus, in order an interference to fall under the scope of this Article, the position itself should constitute "public office" for the purposes of Constitution. The Constitutional Court explored the activities and function of the council of basic education unit and council of faculty and ascertained, that these offices presented internal bodies of university, which take decisions on the issues of governance of the respective institution. The council of the basic educational unit and council of faculty, in view of the nature of their activities and functions, do not carry out the public powers. Therefore, work in these councils does not constitute work in public office. Thus, the disputed provisions did not fall within the ambit of Article 29 of the Constitution.

[5] Ruling №1/23/824 of the Constitutional Court of Georgia of 28 December, 2017 in the case of "Citizens of Georgia – Tornike Gerliani, Tamar Oniani, Elisabed Shengelia and Other v. The Parliament of Georgia".

Furthermore, the Constitutional Court pointed out, that the disputed provision did not fall within the ambit of constitutional right of equality before law either, as each student who wanted to be elected as a member of the student self-government and council of the basic educational unit had to meet the same requirements. Therefore, regulation contained in the disputed provision was neutral and did not lead to differentiation of persons in analogous situation. In view of these reasons, the Constitutional Court decided that the disputed provisions did not fall within the ambit of the fundamental rights named by the complainants, which was the ground of non-admissibility of the complaint for consideration on merits.

Another trend that emerged the last year, was to raise the issue of unconstitutionality of the disputed provision by a complainant with regard to the right, restriction of which was a side effect of a restriction entailed by the disputed provision. The Constitutional complaint no 872[6] should be noted in this respect. The complainants in this complaint disputed the constitutionality of Article 24 (1), 24(2), 24(4) of the Law of Georgia on Police with regard to Article 18(1) of the Constitution of Georgia (Right to Inviolability of Physical Liberty of Person). The above-mentioned disputed provisions provided the grounds and objectives of initiation of special police control, limits of implementation of control and its review mechanisms.

The Constitutional Court interpreted, that special police control means surface examination and inspection of person, thing, or vehicle. Therefore, the disputed provision provides grounds for restriction of the right to privacy. The Court also indicated, that indeed stopping a person, which is restriction of his or her physical liberty, precedes surface examination and inspection. However, in this case, restriction is directed towards the right to privacy, while stopping is a side effect. Thus, the Court decided that constitutionality of the disputed provision could be checked with regard to that right (right to privacy), towards which the restriction was directed and not with regard to that right (inviolability of physical liberty), which presented an inevitable side effect of the restriction.

In view of this, the Court found the claim of unconstitutionality of the disputed provisions with regard to Article 18 of the Constitution to be unfounded.

c) Challenging the whole legislative act as a circumstance, which negatively influences the quality of reasoning

As it was already mentioned, clear identification of their problems by complainant and challenging constitutionality with regard to the appropriate Article of the Constitution is an

[6]Ruling №2/18/759 of the Constitutional Court of Georgia of 28 December, 2017 in the case of „Citizens of Georgia – Sopiko Verdzeuli, Guram Imnadze and Giorgi Gvimradze v. The Parliament of Georgia".

important precondition of success of a complaint. Therefore, when complainants challenge the whole text of legislative act, it is hard for them to demonstrate their problems with sufficient clarity and to bring arguments with regard to each Article. Normative legal act, in certain cases, may contain various regulations: it may impose specific restriction, prohibition, or entitlement; it can also contain procedural or other types of regulations, which may not have any effect of restriction of rights. When they challenge such diversified normative legal act as a whole, the complainants encounter hardship to determine their claims, as well as to determine the relation between the disputed provision and appropriate provision of the Constitution. This trend hinders complainants to substantiate with requisite clarity their constitutional claims. Lack of reasoning, in its turn, leads to declaring a complaint inadmissible for consideration on merits.

The aforementioned trend could be illustrated with the examples of constitutional complaints no. 782 and 783[7]. The complaints challenged the constitutionality of the Resolution №662-IIს of 24 February, 1995 of the Parliament of Georgia on Supreme Authorities of the Government of the Autonomous Republic of Abkhazia and the Resolution №759-IIს of 14 June, 1995 of the Parliament of Georgia on Addition to the Composition of the High Council of Abkhazia of the Member of the Parliament of Georgia elected in Abkhazia with regard to the whole range of provisions of the Constitution of Georgia. These complaints were not admitted for consideration on merits due to their lack of reasoning.

In this respect, the constitutional complaints filed by the Public Defender of Georgia in 2017 are noteworthy. In the constitutional complaint No. 697[8] the Public Defender disputed the legislative regulations, which determine the rule for detection of the offences related to consumption of narcotic drugs. The complainant challenged among others the constitutionality of number of provisions of the Instruction of Bringing a Person for Examination for Identification of the Fact of Consumption of Narcotic Drugs or Psychotropic Substances approved by the Order №725 of the Minister of Interior of Georgia of 30 September, 2015 and provisions of the Procedure for Establishment of Administrative Offences related to Consumption of Narcotic Drugs and Psychotropic Substances approved by the Joint Order №1244–№278/ნ of 24 October, 2006 of the Minister of Interior of Georgia and Minister of Labour, Health and Social Protection. The complainant indicates, that the content of the challenged provisions is ambiguous, which leads to the heightened risks of arbitrariness and

[7] Ruling №2/21/872 of the Constitutional Court of Georgia of 8 October, 2017 in the case of "Citizens of Georgia – David Zakaraia and Khatuna Gadelia v The Parliament of Georgia".

[8] The Recording Notice No. 1/11/697 of the Constitutional Court of Georgia of 7 April, 2017 in the case of "Public Defender of Georgia v. The Parliament of Georgia, Minister of Interior of Georgia and Minister of Labor, Health and Social Protection".

abuse of power by the law-enforcement agencies. The constitutional complaint N697 also challenged constitutionality of those rules, with regard to which the complainant had not presented any argument at all. In view of this, the Constitutional Court did not admit for consideration on merits certain part of the disputed provisions.

The constitutional complaint N1231 filed by the Public Defender of Georgia is also worth noting. The complainant challenged the whole Law of Georgia on Legal Entity of Public Law – Operative-Technical Agency of Georgia. The Public Defender asserted that direct access to telephone and internet communications in the process of implementation of secret investigative activities and electronic surveillance, as well as authority to copy and store identification data should not be given to an investigative body which has professional interest to collect this type of data. At the preliminary session, the representative of Public Defender reduced the claim of unconstitutionality with regard to whole range of provisions of the challenged Law. However, as the submitted complaint of the Public Defender did not provide reasoning with regard to each of the challenged provisions, while part of the provisions had no rights restrictive nature, the Constitutional Court did not admit for consideration on merits this part of the constitutional claims raised due to the lack of reasoning.

ii. Submission of Constitutional Complaint by Person with Standing

Under Article 18(b) of the Law of Georgia on Constitutional Proceedings, 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 competences of the Constitutional Court.

In 2017, the Constitutional Court had to deny admission for consideration on merits of several constitutional complaints on this ground. What follows is the detailed discussion of those circumstances and legal arguments, based on which the Court did not admit constitutional complaints for consideration on merits.

a) The disputed provision does not apply to the person

In order a natural or legal person to have standing for bringing a constitutional complaint, s/he has to substantiate, that the disputed provision applies to them or there is an actual probability that the provision will apply.

In the case of "Citizen of Georgia Apolon Gadelia v. Chairman of the Tbilisi City Court", the complainant disputed the provision, which regulated the procedure for submission of complaints by legal persons at the reception of Civil and Administrative Chambers in the

Citizen Service Center of the Tbilisi City Court. More specifically, the challenged provision determines the procedure for representatives of legal persons to take the line number and to submit the complaints.

According to the interpretation of the Constitutional Court, despite the fact that representatives of legal persons may also be natural persons, the provision explicitly applies to the complaints of legal persons, and therefore has effect on rights of legal persons.[9] In the present case, the complainant was a natural person who did not fall within the scope of the disputed provision. In view of this the Court considered that the complaint was not brought by a person with standing and did not admit it for consideration on merits.

The Constitutional Court decided that the complainant had no standing on the similar ground in the case of "Non-Entrepreneurial Non-Commercial Entity "Frema" v. The Parliament of Georgia". The complainant – legal person challenged the provision providing for criminal responsibility for only physical persons. The Court pointed out that the disputed provision did not apply to legal persons, and therefor the complainant had no standing for the given constitutional dispute.[10]

It is noteworthy, that possible formal applicability of law toward complainant does not suffice to have standing. Person has to prove, that the disputed provision will affect state of his/her rights in the predictable future. Only hypothetical assumption that some time the disputed provision may apply to the complainant is not sufficient to consider him or her as having standing.

In the case of "Citizen of the Republic of Armenia Ani Minasian v The Parliament and Government of Georgia" the complainant, inter alia, challenged the provision, which states that loss of citizenship of Georgia is one of the grounds of termination of status of permanent resident of highland settlement.

In this part of the constitutional claim, the Court did not consider the complainant to have standing. It was deemed to be an extremely abstract danger, that an alien would acquire Georgian citizenship and then lose it and therefore she would also lose the status of the permanent resident of the highland settlement.[11]

---

[9] Ruling №2/9/873 of the Constitutional Court of Georgia on 17 May, 2017 in the case of "Citizen of Georgia Apolon Gadelia v. T".

[10] Recording Notice №2/13/734 of the Constitutional Court of Georgia on 7 July, 2017 in the case of "Non-Commercial Entity "Frema" v. The Parliament of Georgia", II-10.

[11] Recording Notice №2/15/927 of the Constitutional Court of Georgia on 8 September, 2017 in the case of "Citizen of Armenia, Ani Minasian v. The Parliament of Georgia", II-4.

Furthermore, the Court did not consider the complainant to have standing in the case of "Citizens of Georgia – Ivane Petriashvili and Irakli Ulumbelashvili v. The Parliament of Georgia" on essentially similar ground. In this case, the disputed provision regulates the grounds for reinstatement of an officer in the Special Penitentiary Service. Under the constitutional complaint, the complainant Ivane Petriashvili was not and had never been an officer at the Special Penitentiary Service. The Court explained that "Only presumption, that some day the complainant will be employed at the Special Penitentiary Service and then will be dismissed unlawfully, does not meet the standard established in the case law of the Constitutional Court of Georgia"[12]. Thus, the complainant Ivane Petriashvili was not considered to have standing for bringing the constitutional complaint.

b) *Actio Popularis*

It is noteworthy, the legislation of Georgia does not provide for "*actio popularis*" either for natural or legal persons. The legislation entitles only special actors to apply to the Court for the protection of rights of others.[13] 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]

In the case of "Citizen of Georgia Kakhaber Koguashvili v. The Parliament of Georgia", the complainant challenged the regulation, which allowed the enforcement officer in the process of enforcement activities, to enter the premises of a debtor and to inspect every storeroom and possessions of a debtor; the provision also stated the obligation of an enforcement officer to draw a protocol with regard to undertaken inspection.

According to the constitutional complaint, the complainant was an enforcement officer of the LEPL National Bureau of Enforcement. He pointed out, that the disputed provision violates the right to privacy, enshrined in Article 20 of the Constitution, of those people, whose premises are subjected to the enforcement activities.

The Constitutional Court did not consider the complainant to have standing to bring the complaint, as he did not demonstrate the problem entailed by the disputed provision, which

[12] Ruling №2/16/1218 of the Constitutional Court of Georgia of 16 November, 2017 in the case of "Citizens of Georgia – Ivane Petriashvili and Irakli Ulumbelashvili v. The Parliament of Georgia", II-4.
[13] See, for example, Organic Law of Georgia on the Constitutional Court of Georgia, Article 39(1)(b).
[14] Organic Law of Georgia on the Constitutional Court of Georgia, Article 39(1)(a).

affected him directly. His goal was to protect rights of others, which he was not entitled to do under the legislation regulating the constitutional proceedings.[15]

c) The complainant is not subject of the constitutional right

Complainant natural and legal persons are entitled to bring the constitutional complaint only in case, if they also hold the allegedly violated constitutional right. In view of the content and constitutional legal function of a given right, the holders of the fundamental rights enshrined in the Constitution differ. The questions about who can claim the constitutional right are raised often, when the complainant is a legal person. Under Article 45 of the Constitution of Georgia, constitutional rights apply to legal persons as well, in view of their contents. In such case, the Court decides the above-mentioned issue in view of the characteristics of a given constitutional right. In this respect, an important standard was articulated in the case of "Non-commercial Legal Entity "National Committee of Georgia of Blue Shield" and Citizens of Georgia – Marine Mizandari, Giorgi Chitidze and Ana Jikuridze v. The Parliament of Georgia".

In the above case, the complainants challenged the provision of the Law of Georgia on Cultural Heritage, which exempts religious organizations from liability for the breach of the contract concluded with the Ministry of Culture and Protection of Monuments on care and maintenance of the cultural heritage monument or for the breach of terms of the respective permission issued by the Ministry. The disputed provision also exempts religious organizations from application of the legal regulation, which prohibits transfer to the third persons of the various cultural assets, owned by the State and transfer of right of possession and usage on certain category of cultural assets, without the consent of the Ministry.

The Complainants pointed out, that the disputed provision was incompatible with the constitutional rights of enjoyment of cultural environment (Article 37(3) of the Constitution) and protection of cultural heritage (Article 34). Non-commercial Legal Entity "National Committee of Georgia of Blue Shield" was also listed in the constitutional complaint as a complainant together with the several other physical persons. However, the complaint did not provide any arguments on why the mentioned rights apply to legal persons.

The Court emphasized the general requirement that constitutional complaints should be reasoned and stated "complainants should demonstrate, that indicated constitutional

[15] Ruling №2/1/741 of the Constitutional Court of Georgia of 27 January, 2017 in the case of "Citizen of Georgia Kakhaber Koguashvili v. The Parliament of Georgia", II-4.

provisions apply to them"[16]. Moreover, "complainant legal persons are not required in each case to demonstrate that a given right also applies to legal persons", but "...they are obliged to show they can claim those rights, application of which rights to legal persons, is not unequivocal and/or clearly established in the jurisprudence of the Court."[17]

In the present case, the Court did not consider it to be unequivocal whether the right to enjoyment of cultural environment and right to protection of cultural heritage apply to legal persons. Moreover, this issue had not be decided in the case law of the court either. In view of the abovementioned, the Court did not consider the Non-Commercial Entity "National Committee of Georgia of Blue Shield" to be entitled to bring the constitutional complaint.

In line with the above mentioned interpretation, in certain cases, legal persons will have to provide substantial arguments on why a given constitutional rights, which is allegedly violated, apply to them. Otherwise, the Court may consider a legal person not to be entitled to claim that right, if there is no relevant case law on the issue and application of a specific constitutional right to legal persons is not unequivocal and needs an appropriate substantiation.

d) Entitlement of complainants to apply to the Court with regard to the appropriate competence

In view of the requirements of the Constitution and legislation, the lists of persons entitled to initiate constitutional proceedings differ by the various competences of the Constitutional Court. One of the main problems, related to entitlement of the complainants to challenge provisions, is related to this very issue. More specifically, the complainants often apply to the Constitutional Court with regard to its competence, within which they are not entitled to initiate legal dispute under the law.

The case of "Citizens of Georgia Gocha Tevdoradze, Vajha Otarashvili, Fridon Injia and Kakha Kukava v. The Parliament of Georgia" raised this issue. In this case, the complainants challenged the constitutionality of the resolution of the Parliament of Georgia on recognition of powers of members of the Parliament. The complaiants were registered in the election list of the Election Bloc "Davit Tarkhan-Mouravi, Irma Inatshvili, Alliance of Patriots of Georgia

[16] Recording Nocie №2/17/1216 of the Constitutional Court of Georgia of 28 December, 2017 in the case of "Non-Commercial Entity "National Committee of Georgia of Blue Shield" and the Citizens of Georgia – Marine Mizandari, Giorgi Chitidze and Ana Jikuridze v. The Parliament of Georgia", II-2.
[17] Ibid, II-3.

– United Opposition". They claimed that provision of the resolution of the Parliament of Georgia, which dealt with the recognition of powers of the members of the Parliament – Endzela Machavariani, Gia Benashvili, Azer Suleimanov and Giorgi Tsereteli should be declared unconstitutional, in order to enable the complainants themselves to be recognized as members of the Parliament in their stead afterwards.

The Constitutional Court noted that the legislation entitles the President of Georgia, the one fifth of the members of the Parliament of Georgia, as well as the citizen, whose power as a member of the Parliament was not recognized or was terminated before expiration of their term of office by the Parliament of Georgia to argue on the issue raised in the case before the Constitutional Court of Georgia.[18]

The Court declared, that the complainants had not been elected as members of the Parliament in the parliamentary elections of 8 October, 2016. Therefore, "They are not entitled persons under Article 40(1) of the Organic Law of Georgia on the Constitutional Court of Georgia to challenge the constitutionality of the resolution of the Parliament of Georgia."[19]

In this constitutional complaint, the complainants also requested that constitutionality of the rules regulating the elections and the elections, itself, carried out on the basis of these rules, be reviewed. Again, the Court made reference to the limited list of entitled persons, determined by the legislation. More specifically, constitutional complaint related to the constitutionality of the rules regulating elections or referenda and elections or referenda carried out on the basis of these rules can be brought by the one fifth of the Member of the parliament of Georgia, the President of Georgia and the Public Defender of Georgia. In view of this, the complainants were not entitled persons to bring the constitutional complaint under this competence of the Court either.[20]

As a result, the Constitutional Court did not consider the complainants as entitled persons to initiate the constitutional dispute with regard to any of the claims raised in the complaint and did not admit the complaint for consideration on merits.

Furthermore, it is still a persistent problem, that natural and legal persons have inaccurate perception of their competence with regard to the constitutional provisions. More

[18] Ruling №2/8/859 of the Constitutional Court of Georgia of 17 May, 2017 in the case of "Citizen of Georgia Gocha Tevdoradze, Vajha Otarashvili, Fridon Injia and Kakha Kukava v. The Parliament of Georgia", II-2.
[19] Id, II-6.
[20] Id, II-8.

specifically, it is often the case, that physical and legal persons claim that certain normative act should be declared unconstitutional with regard to those provisions of the Constitution, which is not present in the Chapter 2 of the Constitution.

The Constitutional Court has reiterated on several occasions, that to argue about constitutionality of normative acts or a specific provision of it before the Constitutional Court, natural and legal persons are entitled to bring the constitutional complaints only with regard to the provisions of the Chapter II of the Constitution of Georgia.[21]

iii. 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 list the cases falling within the jurisdiction of the Constitutional Court.

The Constitutional Court ensures effectiveness of the mechanism of balances, checks and counterbalances among the branches of government, on the one hand and protects human rights and freedoms enshrined in the Constitution from unjustified interferences of the State, on the other hand. It will be equally impossible for the Constitutional Court to fulfill successfully this function if it fails to fully realize its competence, as well as if it exceeds it. The principle of rule of law "puts the acts... of government within the stringent constitutional-legal limits".[22] Therefore, the Constitutional Court itself has to stay loyal to the limits set by the Constitution in each case, as the basis as well as boundaries of its competence is the Constitution.

The Constitutional Court of Georgia has a well-established case law, which sets forth certain standards for non-admissibility of constitutional complaints for consideration on

[21] Ruling №1/7/727 of the Constitutional Court of Georgia of 21 April, 2017 in the case of "Citizen of Georgia Giorgi Sekhniashvili v. The Parliament of Georgia"; Ruling №3/6/808 of the Constitutional Court of Georgia of 22 June, 2017 in the case of „ Political Union of Citizens "United Democratic Movement", "Alliance of Patriots of Georgia" and "Labour Party of Georgia" v. The Parliament of Georgia"; Ruling №1/10/1228 of the Constitutional Court of Georgia of 12 July, 2017 in the case of „LLC „Bella Costa" v. The Parliament of Georgia".

[22] Judgement №2/2-389 of the Constitutional Court of GEorgia of 26 October, 2007 in the case of "Citizen of Georgia Maia Natadze and others v. The Parliament of Georgia and President of Georgia", II-18.

merits on this ground. In 2017, there were several cases where the Constitutional Court declared the constitutional complaint as non-admissible on this ground. The rulings mostly dealt with the cases, when the challenged legal acts were not normative by nature or a complainant did not challenge the constitutionality of a valid normative act.

a) Issue of constitutionality of a legal act without normative nature

In order the Constitutional Court to review constitutionality of a legal act, it must be of normative nature. Under Article 89(1)(f), it falls within the competence of the Constitutional Court of Georgia to review constitutionality of a normative act on the basis of a person's complaint with regard to the fundamental human rights and freedoms recognized by the Chapter II of the Constitution of Georgia. Furthermore, Article 39(1)(a) of the Organic Law of Georgia on the Constitutional Court of Georgia states, "Citizens of Georgia, other natural and legal persons, if they believe, that their rights and freedoms recognized by the Constitution of Georgia are violated or may be directly violated."

For the purposes of the constitutional proceedings, concept of a normative legal act is not circumscribed by the definition provided in the Law of Georgia on Normative Acts. According to the case-law of the Constitutional Court of Georgia, a legal act, which qualifies as individual legal act by its form may have normative nature: "...Normative nature of a rule is discerned by its compulsory regulation of human behaviour and setting limits of such behaviour. Therefore, a legal provision is of normative nature, if it sets compulsory rule of behaviour, which provides prohibitions or the opposite, permissions for certain behaviour for a specific person or group of persons. Compulsory nature of a legal rule serves for implementation of these very functions and aims to create a new legal order through it."[23]

The cases adjudicated by the Constitutional Court of Georgia this year provide examples, when the complainant made an incorrect assessment of the normative nature of a disputed provision.

The complainant of the constitutional complaint N697 claimed unconstitutionality of the words "on consumption of narcotic substances" in the title of Article 6 and title of the Joint Order №1244-№278/ნ of the Minister of Interior of Georgia and the Minister of Labor,

[23] Ruling of the Constitutional Court of Georgia №1/494 of 28 December, 2010 in the case of „Citizen of Georgia, Vladimer Vakhania v. The Parliament of Georgia", II-10.

Health and Social Protection of 24 October, 2006 on Approval of the Rule for Identification of Administrative Offences Related to Consumption of Narcotic Drugs or Psychotropic Substances. Adopting the Recording Notice №1/11/697 of 7 April, 2017, the Constitutional Court of Georgia did not admit this part of the claim for consideration on merits. It was due to the fact, that neither the title of the normative acts, nor the words in the title of Article 6 of that Act stated a rule of behaviour and therefore, they entailed no danger of violation of rights. The Constitutional Court pointed out, that the disputed titles did not provide any specific rule of identification of administrative offences related to consumption of narcotic substances. It did not define the list of persons, who were authorized to carry out clinical or laboratory tests. Therefore, the disputed provisions did not contain a general rule of behaviour.

The constitutional complaints N782 and N783 had qualitatively the same problem. The complaints challenged the constitutionality of the Resolution №662-IIს of the Parliament of Georgia of 24 February, 1995 (hereinafter "Resolution №662-IIს") on the Highest Authority of the Government of the Autonomous Republic of Abkhazia and the Resolution №759-IIს of the Parliament of Georgia of 14 June, 1995 on Entry of the Members of the Parliament of Georgia Elected from Abkhazia into the Composition of the High Council of Abkhazia (hereinafter - "Resolution №759-IIს").

The Constitutional Court decided, that the preamble, Article 1 and Article 4 of the Resolution №662-IIს, the annexed list of the members of Parliament elected in October, 1991 in the Autonomous Republic of Abkhazia and the Resolution №759-IIს did not contain a generally compulsory rule of behaviour addressed toward the indefinite group of persons and determined for multiple use. The disputed provisions were addressed to specific persons. Namely, the Resolution №662-IIს directly lists those persons, whose powers are recognized under this Resolution. The Resolution №759-IIს is also addressed to the specific group of persons, namely members of the Parliament of Georgia elected from Abkhazia. Therefore, the mentioned disputed provisions did not constitute a normative act for the purposes of constitutional proceedings and their review did not belong to the jurisdiction of the Constitutional Court of Georgia.[24]

b) Valid Normative Act

[24] Ruling of the Constitutional Court of Georgia N2/12/782, 783 of 8 September, 2017 in the case of "Citizens of Georgia – David Zakaraia and Khatuna Gadelia v. The Parliament of Georgia".

According to the interpretation of the Constitutional Court, constitutional rights can only be restricted, when the valid legislative act provides so. Therefore, the Constitutional Court is authorized to adjudicate and review the risks of violation of constitutional rights if there is a restrictive rule and freedom of action of individual in the process of enjoyment of their rights is limited by a normative act. Thus, a complainant is obliged to indicate valid normative acts, which is at odds with the Constitution, in their opinion. Only valid rule can entail the risk of violation of rights enshrined in the Constitution.

This ground was used in one case this year, where the Constitutional Court did not admit the constitutional complaint for consideration on merits. Constitutional complaint N791 challenged Article 1 of the Law of Georgia (4625-Iს) on Amendments to the Civil Code of Georgia of 11 December, 2015. The challenged provision repealed Article 172(3) of the Civil Code of Georgia.[25]

Under the well-established case law of the Constitutional Court, it does not review separately laws of Georgia on amendments and additions: "The subject of substantial review of the Constitutional Court cannot be provisions of the law on additions and amendments, but the valid version of the rule of the main (codified) law, as it was formulated as a result of the adopted amendments."[26] Exception from this rule is the case, when "a regulation, provided in the law on amendments and additions, is not incorporated (integrated) in the other (main) normative act and it continues to operate independently... Law on amendments and additions may become subject of separate review also in the case, where the Constitutional Court reviews the normative act from the perspective of it procedural compliance with the Constitution."[27]

In view of this, the Court declared, that adjudication on the constitutionality of the law on amendments, under which certain rules are repealed in the main law, does not fall under the competence of the Constitutional Court.

[25] Ruling of the Constitutional Court of Georgia №1/1/791 of 7 February, 2017 in the case of „Citizen of Georgia Giorgi Nodia, Non-Commercial Entity "Association of Banks of Georgia" and Non-Commercial Entity "Business Association of Georgia v.The Parliament of Georgia".

[26] Ruling of the Constitutional Court of Georgia №1/494 of 28 December, 2010 in the case of „Citizen of Georgia, Vladimer Vakhania v. The Parliament of Georgia", II-7.

[27] Ruling of the Constitutional Court of Georgia №1/494 of 28 December, 2010 in the case of „Citizen of Georgia, Vladimer Vakhania v. The Parliament of Georgia",II-8.

iv. 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 21^1 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 21^1 of the Organic Law of Georgia on the Constitutional Court of Georgia, when "the chamber 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". This year, there were two constitutional complaints not admitted for consideration on merits on this ground.

The complainant in the constitutional complaint N823 claimed unconstitutionality of the 5 year statute of limitations established for appeal against the final judgement in case there are present the following grounds to resume legal proceedings due to the newly revealed circumstances: 1. if the document, on which the judgement is based, appears to be fake; 2. if the party becomes aware of the circumstances and evidence, which would lead to adoption of the decision favourable to him/her, had they been presented to the court during trial.

The Constitutional Court did not admit the constituitonal complaint N823 for consideration on merits. The Constitutional Court declared that the constitutionality of the disputed rule had already been subject of adjudication of the Court in the judgement №1/3/161 of 30 April, 2003 in the case of "Citizens of Georgia, Olga Sumbatashvili and Igor Khaprov v. The Parliament of Georgia" and it was found to be constitutional.[28]

The constitutional complaint N1217 suffered from essentially the same problem. The complainant challenged the following words of Article 7^4 of the Law of Georgia on Recognition of Ownership on the Land Plots in the Possession (Usage) of the Natural and Private Law Legal Persons": "From 1 January, 2012 a private law legal person will lose the right to recognition of ownership on the land plot under their ... lawful possession (usage)". The complainant asserted its unconstitutionality with regard to Article 14 and Article 21 of the Constitution of Georgia.

[28] Ruling N1/2/823 of the Constitutional Court of GEorgia on 9 February, 2017 in the case of "Citizen of Georgia Ketevan Dolidze v. The Parliament of Georgia".

The Constitutional Court did not admit the disputed provision for consideration on merits, as the issue of its constitutionality had already been adjudicated with regard to Article 14 and Article 21 of the Constitution of Georgia in the Judgement №2/3/522,553 of the Constitutional Court of 27 December, 2013 in the case of " General Partnership "Grisha Ashordia" v. The Parliament of Georgia". In this case, the Court decided that the provision was in compliance with the Constitution. The Constitutional Court of Georgia followed the legal position provided in the Judgement №2/3/522,553 of the Constitutional Court of 27 December, 2013 and stated that there was no ground under Article 21[1] of the Organic Law of Georgia on the Constitutional Court of Georgia to transfer the case to the Grand Chamber.[29]

v. 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."

This served as ground of non-admissibility for the part of the claims raised in the constitutional complaint N604. In this constitutional complaint, the complainant challenged the constitutionality of number of provisions of the Annexed Rule to the Order N98 of the Minister of Justice of Georgia of 27 July, 2011 on Approval of the Rule of Registration and De-registration, Issue of Identification (Residence) Certificate, Passport, Travel Passport and Travel Document of Citizens of Georgia and Aliens Residing in Georgia and of Appendix N1 of the Order N194 of the Minister of Justice of 5 October, 2009 on Approval of the Forms of Biometric Passport of Citizen of Georgia, Biometric Diplomatic Passport of Citizen of Georgia, Biometric Work Passport of Citizen of Georgia, Biometric Travel Passport of the Stateless Persons Permanently Residing in Georgia and Biometric Travel Passport of the Refugee.

According to the interpretation of the Constitutional Court of Georgia, disputed provisions were subordinate normative acts. Therefore, the claims raised in the complaint in this part would be admitted for consideration on merits only in case, if it would be ascertained,

[29]Ruling №1/9/1217 of the Constituitonal Court of Georgia of 21 June, 2017 in the case of "JSC "Saktbobmsheni" v. The Parliament of Georgia".

that constitutionality of these acts could be fully reviewed without review of the constitutionality of the superior normative acts. The Constitutional Court explained, that the identical regulation causing the problem for the complainant was also provided in the superior normative act – Law of Georgia on the Rule of Registration of Citizens of Georgia and Aliens Residing in Georgia, Issuing of Identity (Residence) Cards and Passports of Citizens of Georgia. Therefore, as the provision of the superior act was not challenged, it was impossible to fully review constitutionality of the disputed rule. Therefore the constitutional complain was not admitted for consideration on merits in the respective part.[30]

II. Provisions Overruling Judgements

Within its competence, the Constitutional Court provides constitutional review of normative acts and ensures through it protection and realization of constitutional supremacy, separation of powers and fundamental human rights. It is important component of effective performance of the functions of the Constitutional Court, to equip it with such procedural tools, which would allow flexible, fast and prompt constitutional review.

The Constitutional Court is a judicial body implementing constitutional review and its judgements are binding for every branch of government. In certain sense, judgements of the Constitutional Court are self-enforcing, as the provision declared unconstitutional is invalidated without carrying out any additional measures for its implementation. Moreover, full enforcement of judgements of the Constitutional Court also includes actual implementation of legal standards stated in it and their incorporation in the legislation. In this regard, every branch of government is obliged to adhere in practice to the constitutional requirements under a respective constitutional provision, as it was interpreted in the judgement of the Constitutional Court of Georgia. Enforcement of judgements of the Constitutional Court may depend in certain cases on the drafting of legal acts, which should offer a new regulation of the respective relationships. Judgements of the Constitutional Court have crucial role in the law-making process for novel regulation of legal relationships, which would be in compliance with constitutional principles, as the judgements contain authoritative interpretations of the Constitution, as a whole, as well as its individual provisions and principles.

According to the Organic Law of Georgia on Constitutional Court of Georgia, it is prohibited to adopt such legal act, which contains provisions with the same content, as those

[30] Recording Notice №2/10/604 of the Constitutional Court of Georgia of 22 June, 2017 in the case of "Citizen of Georgia Tengizi Lataria v. The Parliament of Georgia and the Minister of Justice of Georgia".

provisions, which were already declared unconstitutional. Despite this stipulation, it is often the case, that the authority, adopting a legal act, fails to take into account the standards provided in the judgement of the Constitutional Court and the regulation of legal relationships is not compatible with the requirements of constitutional provisions, as the Court interpreted them. It could also be the case, that the Court invalidated the disputed provision, but in spite of this, there still remain the rules of behaviour in the legislation with analogous contents and causing analogous legal problems. Law-maker, whether it represents legislative or executive branches, should take active steps in order to identify the provisions in the legislation in force that have similar contents to the provisions, which were declared unconstitutional by the Constitutional Court of Georgia and to correct them.

At the same time, the Constitutional Court has power to invalidate the provision overruling its judgement in a simplified procedure, without consideration on merits. Under Article 25(4[1]) of the Organic Law of Georgia on the Constitutional Court of Georgia, "If the Constitutional Court ascertains at the preliminary session, that the disputed normative legal act or the part thereof contains rules of the same content as those that had already been declared unconstitutional, ... it will adopt a ruling on non-admissibility of the case for consideration on merits and on invalidation of a disputed act or part thereof."

The Organic Law of Georgia on the Constitutional Court of Georgia, Article 25(4[1]) serves the principle of cost-effectiveness of litigation and effectiveness of administration of justice. This rule empowers the Court to invalidate the rule of behaviour, which has already been once reviewed and found unconstitutional in a summary procedure and without consideration on merits. Under this rule, the Constitutional Court has oversight on the full enforcement process of its judgements, on one hand and disposes with the tool of prevention of violation of human rights, on the other. Below, you can find the discussion on rulings adopted by the Grand Chamber and the Chambers of the Constitutional Court in 2017 on invalidation of the provisions overruling judgements of the Constitutional Court.

i. The Grand Chamber

Constitutional Referral №855 of the Bolnisi District Court

On 15 February, 2017, the Grand Chamber of the Constitutional Court of Georgia adopted ruling on the constitutional submission №855 of the Bolnisi District Court. The subject of dispute in this case was the constitutionality of that normative content of Article 260(1) of the Criminal Code of Georgia, which provided for sentence of imprisonment for purchase and

storage of narcotic substance – raw marijuana. This provision was challenged with regard to Article 17(2) of the Constitution.

The author of the constitutional referral №855 pointed out, that the disputed provision allowed for application of imprisonment, as a sentence for purchase and storage of up to 100 grams of raw marijuana for the purpose of personal consumption. The constitutional referral emphasized that fact, that the legislator considered specific amount of dry marijuana and twice that amount of the raw marijuana as equally dangerous. This fact was demonstrated by the amounts set forth in the law, under which twice the amount dry marijuana was needed to trigger the criminal liability for raw marijuana. In view of the above mentioned, the author of the constitutional complaint asserted that the disputed provision, could be considered as overruling the judgement №1/4/592 of the Constitutional Court of 24 October, 2015.

In its Judgement N1/4/592 of 24 October, 2015, the Constitutional Court declared unconstitutional with regard to Article 17(2) of the Constitution the specific normative content of the following words of Article 260(2) of the Criminal Code (version of the provision, that was in force from 1 May, 2014 to 31 July, 2015), "is punished with imprisonment from 7 to 14 years". The invalidated normative content of Article 260(2) of the Criminal Code allowed application of imprisonment as punishment for purchase and storage for personal consumption of the disputed amount (up to 70 grams) of the narcotic drug – dry marijuana, which is the substance listed in the Law of Georgia on Narcotic Drugs, Psychotropic Substances, Precursors and Narcological Assistance, Appendix N2, 92nd horizontal row.

The Constitutional Court interpreted, that the difference between the disputed provision and the provision declared unconstitutional by the Judgement N1/4/592 of the Constitutional Court was the state of marijuana (dry or raw), as a narcotic drug and its volume. Namely, the disputed provision provided for punishment for purchase and storage of up to 100 grams of marijuana.

In the process of consideration of constitutional complaint №592, based on the provided information, the Constitutional Court found out, that raw marijuana does not have any such quality relevant for the purposes of narcotic intoxication, that it does not have in the dried condition.

The Constitutional Court evaluated, whether the danger entailed by purchase/storage of up to 100 grams of raw marijuana could exceed the similar danger entailed by purchase/storage of up to 70 grams of dry marijuana. The Court ascertained, that the difference between the legally determined amounts of dry and raw marijuana was caused by the bigger ratio of water in the composition of raw marijuana, which increased the amount of the plant, without increase in the narcotic intoxication qualities. This could explain the approach of the legislator,

according to which quantitative indicators in grams for small, large and particularly large amounts of narcotic drugs were twice as much for raw marijuana as the respective amounts for dry marijuana.

Therefore it is clear, that in view of its mass, in determination of the dangers entailed by the purchase/storage of marijuana, the legislator considered 50 grams of dry marijuana to be causing identical danger as the danger caused by 100 grams of raw marijuana. In view of this, it was concluded, that the legislator considered the purchase and storage of 100 grams of raw marijuana to be less dangerous than purchase and storage of 70 grams of dry marijuana. Based on this, the Court concluded, that the amount of raw marijuana stated in the disputed provision, from the perspective of its intoxication effects, was not more that up to 70 grams of dry marijuana. Raw marijuana, amount of which did not exceed 100 grams, could not be considered as the amount, which would *per se* entail the risks of its sale.

In view of all the above-mentioned, the normative content of Article 260(1) of the Criminal Code of Georgia, which provided a possibility of application of imprisonment, as criminal sentence, for purchase and storage for personal consumption purposes of the narcotic, mentioned in the Law of Georgia on Narcotic Drugs, Psychotropic Substances, Precursors and Narcological Assistance, Appendix N2, horizontal row 92, - raw marijuana (up to 100 grams), was considered as overruling of the Judgement N1/4/592 of the Constitutional Court of Georgia of 24 October, 2015 ("Citizen of Georgia Beka Tsikarishvili v. The Parliament of Georgia") and hence, was declared unconstitutional without consideration on merits.

"The Public Defender of Georgia, Citizens of Georgia – Avtandil Baramidze, Givi Mitaishvili, Nugzar Solomonidze and Others (Total 326 Constitutional Complaints) v. The Parliament of Georgia"

On 29 December, 2017, the Constitutional Court of Georgia adopted the recording notice in the case of "The Public Defender of GEorgia, Citizens of Georgia – Avtantdil Baramidze, Givi Mitaishvili, Nugzar Solomonidze and Others (Total of 326 Constitutional Complaints) v. The Parliament of Georgia". The Constitutional Court did not uphold the claim of the complainants with regard to non-admission of the disputed rules for consideration on merits and invalidation of the disputed provisions under Article 25(4^1) of the Organic Law of Georgia on Constitutional Court of Georgia.

The complainants challenged the constitutionality of vesting the powers to copy and store identification data of electronic communications in the LEPL – Operative-Technical Agency of Georgia (hereinafter – "Agency"), as well as granting to the Agency the technical opportunity to intercept communications in real time for carrying out the secret surveillance

measures. They asserted that in the process of secret investigation activities and implementation of electronic surveillance measures, the body with professional interest to have access to such information, should not be allowed to have direct access to telephone and internet communications, as well as to have opportunity to copy and store identification data. In view of its institutional arrangements, rule of determination of its composition and functions, the complainants asserted that the Agency was exactly such a body with professional interest. According to the arguments brought by the complainants, the fact that the investigative body had a technical opportunity to intercept information in real time was sufficient reason to declare the challenged rules unconstitutional. Despite of this, they also referred to the inefficiency of external control mechanisms on the Agency's activities.

The Complainants asserted, that the disputed provisions contained rules with the same content, as the rules declared unconstitutional by the Constitutional Court in the Judgement N1/1/625,640 of 14 April, 2016. Therefore they asked for invalidation of the challenged provisions at the preliminary session, without consideration on merits.

The Grand Chamber of the Constitutional Court of Georgia interpreted the standards set forth in the Judgement N1/1/625,640 in its recording notice of 29 December, 2017. The Court stated, the declaration of the challenged provisions unconstitutional in the previous judgement was caused by the totality of several factors: investigation function of the authorized body, designing secret architecture of technical opportunity by it and, moreover, lack of efficiency of oversight mechanisms available to the personal data protection inspector. The Court explained that granting the technical opportunity to the investigative body, *per se*, does not lead to violation of human rights, neither mere transfer of this opportunity to a different body will suffice in itself to provide due safeguards for protection of right to privacy. In both cases the legislator is obliged, to provide due safeguards to ensure that interference in right to privacy is carried out strictly in line with the constitutional requirements.

The Constitutional Court of Georgia compared the nature of the bodies, mandated to intercept information in real time, its opportunity to design the infrastructure and efficiency of oversight on this process under the rules declared unconstitutional under the Judgement N1/1/625,640 of 14 April, 2016 and the rules currently in force, in order to find out whether the challenged rules presented the overruling provisions of the Judgement N1/1/625,640 of 14 April, 2016.

With regard to the authorized body, the Constitutional Court reviewed the relation between the Agency and State Security Service. It concluded, that indeed, the technical opportunity to interception of information in real time is vested in the Agency, which is the Legal Entity of Public Law under the Governance of State Security Service, however it is to

certain extent an autonomous unit of the State Security Service, which makes decisions directly through the head of the Agency on the whole range of issues. In this respect, there is a qualitative difference between the Agency and the body authorized to intercept information in real-time at the moment of adoption of the Judgement N1/1/625,640 of the Constitutional Court of Georgia, which was Operative-Technical Department.

It is noted in the recording notice, that in contrast to the departments of the Service, the head of the Service does not make unilateral decision on appointment or dismissal of the head of the Agency. Furthermore, there are issues on which the Agency, its Head takes independent decisions. For example, issues related to human resources are mostly delegated to the head of the Agency. Moreover, there is different situation with regard to adoption of normative legal acts related to the interception of information in real-time and implementation of the following steps. For example, at the time of adoption of the Judgement N1/1/625,640 of the Constitutional Court of Georgia, architecture of technical opportunity of real-time interception of information and the respective interfaces were determined by the respective act of the State Security Service of Georgia. Under the legislation in force, on the other hand, it is the head of the Agency who adopts any normative act related to issues of real-time interception of information and only s/he is empowered to amend or revoke these acts.

The Court explained with regard to design of the infrastructure, that under the legislation in force, technical means for real-time interception of information is created by the Agency. Although it is true, that this process is still secret, the Personal Data Protection Inspector is vested with power under the law, to carry out thorough and comprehensive inspection of the technical infrastructure. One of the important reasons for finding the provision unconstitutional was the lack of effective external checks. Therefore amendments in this respect, was considered by the Constitutional Court as an essential amendment, which ruled out the invalidation of the challenged provisions in the summary proceedings, without consideration on merits.

The Constitutional Court reviewed the external oversight mechanisms on secret surveillance and recording of telephone communications and interception of Internet communications and concluded that in case of both types of secret investigative activities, the efficiency of external oversight had been increased.

With regard to the secret surveillance and recording of telephone communications, the Constitutional Court explained, that in contrast to the provisions valid at the time of adoption of the Judgement N1/1/625,640 of the Constitutional Court of Georgia, the legislation did not contain any more the clause that created the risks of employment of alternative technical means, similar to the risks present at the moment of adoption of the Judgement. More

specifically, it is determined, that stationary technical means can be employed only through the placement of the legal interception system and the technical and software maintenance "related to it". The legislation does not contain any more a general reference to "other devices and software maintenance", the very statement, which led the Court to see the opportunity to circumvent the system of lawful interception management. Moreover, the procedure and sequence of placement of each technical means of real-time interception of information was determined. Furthermore, there is a list of activities that the Personal Data Protection Inspector is legally empowered to carry out in the process of inspection. These circumstances significantly change the reality to be analyzed and require consideration on merits.

With regard to interception of Internet communications, the Court noted that enlisting by the Law of the activities to be carried out in the process of inspection by the Personal Data Protection Inspector constituted the improved mechanism of external oversight. The same argument was used by the Court in the consideration of amendments to the oversight mechanism for the system of real-time identification of geolocation. Thus the features of the present system and its oversight were not essentially identical to the system, which was declared unconstitutional under the Judgement N1/1/625,640 of the Constitutional Court of Georgia.

The Constitutional Court reviewed the legislative provisions related to the copying and storing of the identification data and explained that 2-year term of storage of copied data was declared unconstitutional by the Judgement N1/1/625,640 due to the intensity of interference together with other reasons. Under the currently disputed regulations, the term of storage of the copied date is reduced to the half and the data can be stored for no more than 12 months. The Constitutional Court declared that in the given situation, the difference between the terms was quite apparent and required review of the system in the format of consideration on merits. The Court declared with regard to operation of "alternative banks" in the process of copying and storage of identification data, that the presence of legislative mechanism of inspection of this process by the Personal Data Protection Inspector presents a means of prevention of creation of "alternative banks", which was not available at the time of adoption of the Judgement N1/1/625,640 of the Constitutional Court of Georgia. Review of effectiveness of this mechanism also required adjudication in the format of consideration on merits.

In view of all the above-mentioned, the Constitutional Court did not uphold the motion of the complainants on invalidation of the challenged provisions in the summary proceedings, without consideration on merits. Therefore, that part of the constitutional complaint, which led to interference in the rights of complainants, was admitted for adjudication in the format of consideration on merits.

The Members of the Constitutional Court of Georgia, Giorgi Kverenchkhiladze, Irine Imerlishvili and Maia Kopaleishvili have adopted the dissenting opinion which is appended to the decision.

ii. The First Chamber

„Citizens of Georgia – Gocha Gabodze and Levan Berianidze v. The Ministry of Labor, Health and Social Protection (Constitutional Complaint №878)

On 13 July, 2017 the First Chamber of the Constitutional Court of Georgia upheld the claim of the citizens of Georgia Gocha Gabodze and Levan Berianidze (Constitutional Complaint №878) and invalidated Paragraph 24(a) of the Appendix №1 of the Order №241/ნ of the Minister of Labor, Health and Social Protection of 5 December, 2000 on Determination of Restrictions on Donation of Blood and Its Components. The challenged provision prevented men who have sex with men (hereinafter "msm group") from donation of blood and its components.

The complainants argued, that the disputed provision deprived men who had even one sexual intercourse with men of the right to donate blood and its components forever, throughout their lifetime, regardless of whether that intercourse entailed the high risk of acquisition of blood-borne viruses. The complainants asserted, that this type of prohibition was not compatible with Article 14 (equality before law) and Article 16 (right to free development of personality) of the Constitution of Georgia.

The complainants argued, that the disputed provision had the identical content as the rule declared unconstitutional by the Judgement №2/1/536 of 4 February, 2014 of the Constitutional Court of Georgia. Therefore they asked that the disputed provision be declared unconstitutional in the summary proceedings, without consideration on merits.

The respondent party stated, that the aim of the disputed provisions was protection of life and health of blood recipients. The respondent also referred to the extremely high risk of acquisition of blood-borne infections through the intercourse between the same-sex partners (males) and furthermore, to the impossibility of full detection of these deseases within certain period through the blood tests available in Georgia. In view of these arguments, the respondent asserted, it was the most reasonable solution to restrict the right of donation to the members of the risk-group indefinitely.

In this case, the Constitutional Court decided, that the legitimate goal of the disputed provisions was protection of health of recipients of blood and its components, and ensuring

the safety of blood donation process. In view of the Constitutional Court, the regulator imposed absolute and blanket ban on the men who had sex with men. The Court reasoned, that it is possible to fully identify the blood-borne diseases through blood tests after certain period; therefore, the regulation can determine the period, during which it is impossible to identify all the infections via blood screening; restriction of right to donation can only apply within this period. Therefore, blanket and indefinite restriction of the right to donation of blood and its components for persons who belong to the msm group of risky behavior was considered as disproportional.

The Constitutional Court declared, that the disputed rule challenged by constitutional complaint N878 had the content similar to the rule declared unconstitutional under the Judgement №2/1/536 of the Constitutional Court of Georgia of 4 February, 2014 and led to analogous legal outcomes. Therefore the Constitutional Court invalidated the disputed provision in the summary proceedings without consideration on merits.

„Citizens of Georgia – Emzar Paksadze and Tamar Sadradze v. The Parliament of Georgia" (Constitutional Complaints №1219 and №1236)

On 13 October, 2017, the Constitutional Court of Georgia adopted the Ruling in the case of "Citizens of Georgia – Emzar Paksadze and Tamar Sadradze v. The Parliament of Georgia" (constitutional complaints №1219 and №1236) and invalidated the part of the disputed provision without consideration on merits.

The complainants challenged the provisions of the Criminal Procedure Code of Georgia, which deprived the party of the litigation, who failed to appear at the court hearing without a good cause, the right of appeal against the judge-ordered fine.

The complainants asserted, that possibility of a person to challenge an act affecting their rights is protected under the right to fair trial (Article 42(1) of the Constitution of Georgia). They alleged, that the lack of right to appeal against the order under the diputed provisions empowered the judge to act in an arbitrary manner, as there is no mechanism, to check the legality of their decisions on the issues regulated under the disputed provision.

The Complainants claimed, that the disputed provision had the identical content to the rule found unconstitutional under the Judgement №2/2/558 of the Constitutional Court of Georgia of 27 February, 2014 ("Citizen of Georgia Ilia Chanturaia v. The Parliament of Georgia"). Therefore they asked for invalidation of the challenged rule in summary proceedings, without consideration on merits.

The respondent party asserted, that the legitimate aim of the disputed regulations was effective administration of justice and protection of cost-effectiveness of court litigation. In their opinion, the regulation applied to strictly defined cases. Therefore, the risk of judicial error or arbitrariness is so reduced in the process of adoption of order, that appeal against it is purposeless. Moreover, inability to challenge the order diminishes the risk of arbitrariness of participants of litigation.

The Constitutional Court of Georgia interpreted the standards set forth in the Judgement №2/2/558 of the Constitutional Court of Georgia of 27 February, 2014 and declared, that in view of that judgement, where restriction of the right to fair trial is related to imposition of liability for certain disciplinary offence, for transgression, in order to prevent or afterwards remedy arbitrariness or error of a judge, it is necessary, that a person, who was imposed the liability, enjoy the minimal procedural guarantees protected under the right to fair trial, which implies right to appeal against a judgement, *inter alia*.

The Constitutional Court emphasized the difference between the rule declared unconstitutional in its Judgement №2/2/558 of 27 February 2014 and the rules challenged in the constitutional complaints №1219 and №1236 and pointed out, that indeed, the rule declared unconstitutional by the Judgement №2/2/558 of 27 February, 2014 constitutes a rule applicable in the civil procedure, however for the purposes of the issue of the case this difference is immaterial. The challenged regulation was not related to distinctly criminal aspects of litigation. Due conduct of trial, presentation of the positions of the parties in orderly, normal setting and maximal effectiveness of adjudication is a crucial interest in consideration of criminal, as well as civil cases. At the same time, nature of the act imposing liability on a person who has committed an offence against the court is not changed by the type of proceedings in the course of which it took place. Therefore, there is an equal interest to appeal against that act in both criminal and civil proceedings. Therefore, the Court explained, that there was no new circumstance, which would require consideration of the issue on merits.

In view of the above-mentioned, the Constitutional Court of Georgia decided, that the rules challenged in the constitutional complaints №1219 and №1236 in the part regarding prohibition of appeal against the order on imposition of fine, repeated the content of the rule that has already been declared unconstitutional by the Constitutional Court of Georgia. Therefore, the Constitutional Court invalidated the disputed provisions, in the relevant part of their claims in the summary proceedings, without consideration on merits.

„Non-Commercial Entity "Human Rights Education and Monitoring Center (EMC)" and Non-Commercial Entity "Ertoba 2013" v. The Government of Georgia" (Constitutional Complaint №1241)

The Constitutional Court of Georgia adopted Ruling in the case of "Non-Commercial Entity "Human Rights Education and Monitoring Center (EMC)" and Non-Commercial Entity "Ertoba 2013" v. The Government of Georgia" (Constitutional Complaint №1241). The Court upheld the complainants' claim with regard to non-admission of the case for consideration on merits and invalidation of the disputed provisions.

The complainants challenged the regulations provided in the Resolution of the Government of Georgia, under which the reports/conclusions and recommendations prepared as part of the inspection of workplace conditions within the state-implemented programs of 2015, 2016 and 2017 was considered as non-public information. The complainants asserted that the disputed provisions did not meet the formal requirement set forth in Article 41(1) of the Constitution of Georgia, which states that right of access to public information can only be restricted by law, whereas the disputed provisions, were part of the subordinate normative act, not law. Moreover, the legislative body of Georgia did not delegate the power to regulate this issue to the Government of Georgia.

The complainants asserted, that the challenged provisions were overruling the Judgement №1/4/757 of 27 March, 2017 of the Constitutional Court of Georgia ("Citizen of Georgia Giorgi Kraveishvili v. The Government of Georgia"). They asked for invalidation of these rules in the summary proceedings, without consideration on merits.

In the present case, first the Constitutional Court determined, that the documentation prepared as a result of inspection of working conditions presented public information stored in state institutions for the purposes of Article 41 of the Constitution of Georgia. For implementation of state programs of inspection of workplace conditions, the respective expenditures should be allocated in the state budget. At the same time, state programs of 2016 and 2017 on working conditions designate the Department of Inspection of Working Conditions of the Ministry of Labor, Health and Social Protection of Georgia, to be the authorized body to implement these programs. This Department is part of the system of the Ministry and operates within the Ministry. Moreover, Program of Monitoring of Working Conditions of 2015 was implemented at the initiative of the working group founded by the

individual administrative legal act of the Minister of Labor, Health and Social Protection of Georgia. The Court explained, that the Department implementing the inspection of working conditions, as well as the working group operating in 2015 were founded by the government and are state institutions funded by the government, which carry out public law functions according to the legislation. In view of the above-mentioned, they are "state institutions" for the purposes of Article 41(1) of the Constitution. Therefore full specter of any form of information available there can be considered as "information contained in official records".

The Constitutional Court explained the standards set forth in the Judgement №1/4/757 of the Constitutional Court of Georgia of 27 March, 2017. It stated, that in a given case violation of formal criteria of access to the public information led to finding of the disputed provision unconstitutional. Specifically, possibility of access to public information was restricted by a subordinate normative act, instead of law, whereas, no law delegated relevant power to the Government. In the present case as well, similar to the regulation declared unconstitutional, right to have access to public information was restricted by a normative act in the form of resolution of Government, which is not a law but a subordinate normative act. Moreover, the legislator did not delegate the power to the Government to restrict the right of access to public information, created as a result of inspection of working conditions. Despite the fact that the disputed provisions set forth a restriction of right of access to totally different information content-wise, from the information regulated under the rule found unconstitutional by the Judgement №1/4/757 of 27 March, 2017, the Court decided, that for ascertaining the formal compatibility with the Constitution, material content of the information was not relevant.

In view of the above-mentioned, the Constitutional Court of Georgia decided, that the rules challenged in the constitutional complaint №1241 constituted the rules of the same content, as the rules found unconstitutional under the Judgement №1/4/757 of the Constitutional Court of Georgia of 27 March, 2017 in the case of "Citizen of Georgia Giorgi Kraveishvili v. Government of Georgia". Therefore, these rules were declared invalid without consideration of the case on merits.

iii. The Second Chamber

„Non-Commercial Entity Political Union of Citizens "United National Movement" v. The Parliament of Georgia " (Constitutional Complaint №1214)

On 16 November, 2017, the Constitutional Court of Georgia adopted the ruling in the case of "Non-Commercial Entity Political Union "United National Movement" v. The Parliament of Georgia" (Constitutional Complaint №1214).

The subject of dispute in this case was: a. constitutionality of Article 39, Subparagraphs (a.b), (b.b) and (g.b) of the Civil Procedure Code of Georgia with regard to Article 14 and Article 42(1) of the Constitution; b. constitutionality with regard to Article 14 and Article 42(1) of the Constitution of the following provisions of Article 4 of the Law of Georgia on State Fee: words of Article 4(1)(h) "whereas, if an applicant is a legal person – 150 GEL"; words of Article 4(1)(h[1]), "whereas, if an applicant is a legal person – 150 GEL"; words of Article 4(1)(i), "whereas if an applicant is a legal person – 300 GEL"; Article 4(2), Subparagraphs "a.b", "b.b" and "g.b"; Article 4(3)(b).

The challenged provisions provided for the higher court fees for legal persons compared with natural persons for initiation of certain legal proceedings at court. The maximum amount of court fees for natural and legal persons was also different.

The complainant asserted that the challenged rule was discriminatory on the ground of legal status of a person. In general, the goal of setting the court fee is prevention of growing numbers of ill-founded complaints, fostering parties to perform their duties and settle. Therefore accomplishment of these goals was equally important to both natural and legal persons. Therefore it was ambiguous for the complainant, which circumstances and motives served as ground, for setting different requirements for legal persons. Moreover there was no legitimate aim of differential treatment, which would justify the payment of increased amount of court fees by legal persons, compared to natural persons, when they applied for the same court services.

The complainant asserted, that the disputed provisions were overruling the Judgement №2/6/623 of the Constitutional Court of Georgia of 29 December, 2016 in the case of "LLC "Unison Insurance Company" v. The Parliament of Georgia" and asked for declaration of the disputed provisions invalid without consideration of the case on merits.

The respondent party, representative of the Parliament of Georgia declared that the differential treatment of natural and legal persons was determined by their different legal status and property situation, which is demonstrated by the mandatory determined capital of legal persons.

The Constitutional Court of Georgia, in its Judgement №2/6/623 of 29 December, 2016 in the case of "LLC "Unison Insurance Company" v. The Parliament of Georgia" declared unconstitutional the rules of the Civil Procedure Code of Georgia, which provided for higher amount of state fees to be paid to the court by legal persons compared with the natural persons.

In that Judgement, the Constitutional Court of Georgia deemed the reduction of probability of bringing ill-founded and meritless complaints before the court to be the legitimate aim of setting the state court fee. The Court also noted, that the state court fee which serves the goal of prevention of ill-founded complaints was equally effective with regard to natural and legal persons. Thus, the Constitutional Court decided, that unjustified differential treatment with regard to the state court fee on the ground of status of a legal person should not take place.

In the present constitutional dispute, the disputed provisions, which dealt with the amount of state court fees for the number of proceedings in civil cases, contained literally identical content of the invalidated rules, had the same subject and scope of regulation. The only formal difference was the fact, that currently disputed provisions were set forth in another law, which was not considered by the Constitutional Court of Georgia to be essentially differentiating factor in adjudication of this case.

With regard to the rules setting differential amount of fees of application to the Constitutional Court, the Constitutional Court of Georgia declared, that though there are significant differences between the constitutional proceedings and civil proceedings, in the given case the purpose and object of setting the state court fee was identical. Therefore, the differences in proceedings could not be considered as an essential difference, due to which it would be necessary to undertake additional review of the constitutionality of the disputed rules in the format of consideration on merits.

In view of all the abovementioned, the disputed provisions were considered as overruling the Judgement №2/6/623 of the Constitutional Court of Georgia of 29 December, 2016 and were declared invalid.

„Citizens of Georgia – Ivane Petriashvili and Irakli Ulumbelashvili v. The Parliament of Georgia" (Constitutional Complaint №1218)

On 16 November, 2017 the Second Chamber of the Constitutional Court of Georgia adopted the ruling in the case of "Citizens of Georgia – Ivane Petriashvili and Irakli Ulumbelashvili v. The Parliament of Georgia" (constitutional complaint №1218).

The subject of dispute in the present case was constitutionality of the 2nd sentence of Article 37(1) of the Law of Georgia on Special Penitentiary Service with regard to Article 42(9) of the Constitution of Georgia.

The disputed rule provided for the entitlement of an official in case of unlawful dismissal to require recognition of their dismissal as unlawful and respective salary. However, the rule also provided that remuneration for the period of involuntary absence from work should not exceed the amount of salary for 3 months.

The complainants asserted, that although unlawfully dismissed person is entitled to apply to court, the disputed rules did not ensure full and fair compensation for a person who was unlawfully dismissed from the penitentiary service. Moreover, the rule served no legitimate aim and the aspiration to save state financial resources cannot be a reason to deny full compensation for the lost salary.

The authors of the constitutional complaint stated, that the disputed rules had the content similar to the rule declared unconstitutional by the Judgement №2/3/630 of the Constitutional Court of Georgia of 31 July, 2015 and asked for invalidation of the disputed provisions in a summary proceedings, without consideration on merits.

The respondent party stated, that the disputed rules were similar to the rules invalidated under the above-mentioned Judgement, content-wise. However, the respondent also added, that from 1 July, 2017 new Law on Public Service would enter into force, which would provide for a different regulation of rule of compensation of damages for involuntary absence of unlawfully dismissed servant and the judge would have opportunity to fully compensate the inflicted damages for a servant; the court would not be bound by the upper limit of compensation set by the disputed provision.

In the Judgement №2/3/630, the Constitutional Court declared unconstitutional the rule, which provided for compensation of not more than 3 months salary for unlawfully dismissed servant for the period of involuntary absence from work. The Constitutional Court explained, that the disputed provision infringed on the constitutional principle of full compensation of damages inflicted to the unlawfully dismissed persons from public service and it was incompatible with Article 42(9) of the Constitution.

The Constitutional Court decided, that the disputed provision of the constitutional complaint №1218 contained similar restriction of right to compensation of damages of a person unlawfully dismissed from the Special Penitentiary Service. Article 42(9) of the Constitution sets forth state obligation to fully compensate the damages caused by unlawful acts of state

authorities. This obligation applies equally to any public servant, who has been unlawfully dismissed from their work. The Constitutional Court indicated, that the special Penitentiary service is one of the specific types of public service, while peculiarity and characteristics of public service is irrelevant for the constitutional principle, according to which, a person, who has been unlawfully dismissed from public service, should receive full compensation of damages thus entailed.

In view of all the above-mentioned, the disputed provision was considered as overruling the Judgement №2/3/630 of the Constitutional Court of Georgia of 31 July, 2015 and it was declared invalid by the Constitutional Court of Georgia without consideration of the case on merits.

III. Judgements

2017 has been unparalled year in view of the amount and volume of judgements adopted by the Constitutional Court. The judgements of the court of 2017 dealt with many aspects of interpretation and application of Constitution of Georgia. New constitutional legal standards were constructed and established. The public interest towards the work of the Court was also very high in 2017, which could be seen in the constant discussions with regard to the court hearings, as well as court judgements. Thus, for the thorough analysis of constitutional justice in the country and the new constitutional standards adopted by the Court, it is crucial to analyze the court judgements themselves.

i. Judgements of the Grand Chamber

„Citizen of Georgia Kakha Kukava v. The Parliament of Georgia “ (Constitutional Complaint N600).

On 17 May, 2017, the Grand Chamber of the Constitutional Court of Georgia adopted the judgement in the case of Citizen of Georgia Kakha Kukava v. The Parliament of Georgia.

The complainant challenged the Articles 134(1), Article 134(2), Article 143(8) and words of Article 167(1) of the Election Code of Georgia with regard to the first sentence of Article 28(1), Article 29(1) and Article 29(2) of the Constitution of Georgia.[31] Under the disputed

[31] The subject of the dispute fully: constitutionality with regard to the 1st sentence of Article 28(1) and Paragraphs 1 and 2 of Article 29 of the Constitution of Georgia of the words of Article 134(a), “and permanently resided in

provisions, person was not allowed to participate in the elections of members of the municipal assembly, mayor/head of executive body of local government, unless s/he had permanently resided on the territory of Georgia for 2 years prior to elections.

In view of the complainant party, right of a person to take the respective elective position, in case they receive enough votes for victory in elections falls under the scope of Article 28(1) of the Constitution. However, in order to reach the stage of victory one needs to participate in voting, which is the constitutional right of everyone in case they meet the constitutional conditions. Moreover, the complainant noted, that both elective and appointment positions fall under Article 29 of the Constitution of Georgia.

The complainant considered, that state has no right to introduce residence requirement for enjoyment of the right to stand for local self-government election, as no such requirement is stipulated in the Constitution of Georgia. However, had the legislator had such power, in complainants opinion, the two-year term of permanent residence in Georgia would still be unjustified and unexplainable. According to the constitutional complaint, the disputed provisions did not differentiate between the citizens of Georgia who are permanent or temporary residents abroad. Moreover, it was not clear, what permanent residence on the territory of Georgia implied and this criterion did not meet the requirements of foreseeability.

The respondent party did not agree with the complainants arguments. The representative of the Parliament of Georgia explained that introducing the criteria for participation in elections, the State carries out its positive obligation and introducing the residence requirement it brings elections within constitutional limits. In view of the respondent, residence requirement is a strong guarantee, which ensures the solid link of a member of the municipal assembly, mayor and head of the local government with the state. The respondent also noted, that the right to stand for election of member of the municipal assembly, mayor/head of executive body of local government does no fall within the scope of Article 29 and it should only be reviewed under Article 28 of the Constitution.

First, the Constitutional Court elaborated on the separation of scopes of Article 28 and Article 29 of the Constitution. According to the Court's explanation, if elections, as a procedure

---

Georgia... including, for at least 2 years prior to the day of appointment of elections", words of Article 134(2), "who permanently resided in Georgia... including, for at least two years prior to the day of appointment of elections", words of Article 143(8) "in Georgia... including the fact of permanent residence for the last 2 years" and words of Article 167(1) "and for the last 2 years prior to the day of appointment of elections permanenly resides in Georgia" of the Organic Law of Georgia "Election Code of Georgia".

for taking the office is required by the Constitution of Georgia, then the right to hold that position is protected under Article 28 of the Constitution, whereas if the Constitution of Georgia does not require election for taking the office and holding elections is required by the ordinary legislation, the issue of constitutionality of access to such office, should be reviewed with regard to the right of holding public office. Providing this interpretation, the Constitutional Court overruled the approach established by the Judgement of 14 April, 2016 in the case of "Citizens of Georgia – Salome Kinkladze, Nino Kvetenadze, Nino Odisharia, Dachi JaneliZe, Tamar Khitarishvili and Salome Sebiskveradze v. The Parliament of Georgia", according to which right of mayor/head of executive body of local government to take the public office, was considered to fall, inter alia, under the scope of Article 28 of the Constitution.

Reviewing the constitutionality of requirements towards the candidate of member of municipal assembly, the Constitutional Court noted that introducing requirements for taking the elective office is not incompatible with democratic governance. At the same time, the Court considered it unacceptable to introduce requirements, which are not provided by the Constitution for the elections, which should be held according to the Constitution and the legitimate aim of restriction of this right cannot be ensuring selection of the best candidate and/or the candidate who is objectively the most fit for the elective position. The Constitutional Court explained, that exception can be introduced, when the aim of the requirements prescribed by the law is to prevent those risks, which are entailed by electing a certain person in an office. The elections of the municipal assembly are provided by the Constitution of Georgia. However, the Constitution does not provide for the special requirements for members of the municipal assembly, which were provided in the disputed rules. Moreover, the respondent party did not point out any danger, prevention of which was served by the disputed rules and it could not be discerned from the essence of the disputed regulations either. Therefore the Court considered that the disputed provisions were not compatible with the right of elections enshrined in Article 28 of the Constitution.

Reviewing the requirements for the candidate of mayor/head of executive body of local government, the Constitutional Court paid particular attention to the fact, that the disputed rule imposed the obligation on the candidates not to live in a specific self-governing unit, but to live generally on the territory of Georgia. The Court declared, that the restriction provided in the challenged provisions cannot serve as guarantee of involvement of a person in a political life of the State, or an unconditional and unparalleled means for achieving this goal. Meeting the requirement set forth in the disputed provisions cannot in itself ensure involvement of that

person in the political life of the state. Moreover, the restriction is not tailored in a way to ensure knowledge of necessities of a specific self-governing unit. In view of this, the Constitutional Court decided, that the disputed rules did not comply with the right to hold public office under the Constitution of Georgia.

The dissenting opinion of the Member of the Constitutional Court, Maia Kopaleishvili is appended to the Judgement.

„Citizens of Georgia Mtvarisa Kevlishvili, Nazi Dotiashvili and Marina Gloveli v. The Parliament of Georgia“ (Constitutional Complaint N717)

On 7 April, 2017 the Constitutional Court of Georgia adopted the Judgement in the case of “Citizens of Georgia, Mtvarisa Kevlishvili, Nazi Dotiashvili and Marina Gloveli v. The Parliament of Georgia” (constitutional complaint N717).

According to the Judgement, the constitutional complaint N717 was not upheld. The complainants applied for declaration of the rules regulating appointments of appellate and district (city) court judges unconstitutional.

The complainants argued, that the legislation did not provide for requirement of reasoned judgement of the High Council of Justice on appointment of judges, which was incompatible with the right to hold public office enshrined in Article 29 of the Constitution of Georgia. Moreover, candidates of judgeship were deprived of opportunity to appeal against the judgement, which denied their appointment as judges, which violated right to fair trial recognized in Article 42(1) of the Constitution of Georgia.

In the present judgement, the Constitutional Court of Georgia provided important interpretation on the constitutional standards of appointment of judges. The Constitutional Court pointed out, that the right to take public office enshrined in Article 29 of the Constitution includes the requirement that the decisions related to appointments in public office be reasoned. The requirement of reasoning increases accountability of the actors authorized to appoint someone on public position and transparency of the process. Moreover, the risk of arbitrary use of this power is reduced. The Constitutional Court interpreted, that this requirement applied to the decisions related to appointments of judges adopted by the High Council of Justice of Georgia.

As to the meeting of requirement of reasoning, the Constitutional Court pointed out that in the process of appointment of judges, the decision adopted in view of the specificity of respective criteria, is generally based on the range of objective and subjective criteria. To ascertain compatibility with the objective criteria, to provide reasons for decision and then to

review it is not difficult and objective review of the appropriateness of decisions is possible; whereas it is a complicated task to provide reasons on compatibility with subjective criteria and then to review that reasoning. It is hard to explain the decision on this issue in objective terms, to give reasons, to review reasoning and to identify/check whether the solution is correct or not. However, the route that the decision-maker took in order to arrive at the decision can be reviewed objectively. In view of this, reasons should be provided for decisions on selection of judges based on any subjective or objective criterion. However, the requirement of reasoning may be of differing degree in view of the nature of criterion.

Ascertaining the content of the disputed provisions, the Constitutional Court took into account the normative realm formed after adoption of amendments to the Organic Law of Georgia on Common Courts on 8 February, 2017.

The Constitutional Court reviewed the rules regulating appointments of judges and declared that the stage of appraisal of candidates is a certain form of reasoning for its decision by the High Council of Justice. As part of the appraisal, each member fills out evaluation form according to the predetermined criteria. The evaluation form serves to find compatibility of a candidate with objective and subjective criteria. Namely, the candidate for judgeship is selected based on two criteria – conscientiousness and competence.

The Constitutional Court reviewed the legislation in force at the moment of adoption of the judgement and interpreted, that the legislation provided for division of the conscientiousness component into characteristics. For evaluation of each characteristic as part of the consientiousness component, the issues that should be taken into account were structured as objective categories. The disputed legal act also provided rule for appraisal by each component. In the process of evaluating a candidate for their competence, a member of the High Council of Justice of Georgia gives a candidate appropriate scores according to the pre-determined standards of scoring. Namely, the legislation determines the maximum number of scores for each characteristic.

The next stage of appraisal of candidates is voting. This stage takes form of secret ballot and in this part, the members of the High Council of Justice do not indicate those factual premises, which led them to their decision. Despite the fact, that the legislation does not require reasoning for the results of voting from the High Council of Justice, in view of the entire process of competition, it is clear how the High Council of Justice arrived at its final decision. Prevention of discriminatory and biased decisions is ensured through the mechanisms of appeal. Based on these arguments, the Constitutional Court of Georgia decided, that the rules disputed by the complainants did not contradict the requirements of right to hold public office and the constitutional complaint was not upheld in this part.

According to the explanation of the Constitutional Court of Georgia, it is the requirement of the right to fair trial enshrined in Article 42(1) of the Constitution, that appeal against any rights restrictive act before the court be ensured in line with the constitutional standards. This constitutional stricture, also applies, with due regard to its specificity, to appeal of the decision adopted to deny a person appointment as judge.

In view of the complainant, the subject of the judicial review should be the both, procedural as well as substantive issues of the decisions of the High Council of Justice, such as, whether candidate was treated discriminatorily, whether there was arbitrariness on the part of the High Council of Justice, whether the judgement was based on the criterion that was not pre-determined.

The Constitutional Court of Georgia indicated in its Judgement, that under the version of the Organic Law of Georgia on Common Courts currently in force the problem named by the complainant as ground of unconstitutionality of the disputed provision was solved. The legislation contains the possibility to appeal against the decision of the High Council of Justice of Georgia on the ground that was problematic for the complainant. Therefore the challenged provisions were not found unconstitutional with regard to Article 42(1) of the Constitution.

The dissenting opinion of the Judges Maia Kopaleishvili, Irine Imerlishvili and Giorgi Kverenchkhiladze is appended to the Judgement.

„Citizen of Georgia – Lali Lazarashvili v. The Parliament of Georgia“ (Constitutional Complaint N642)

On 10 November, 2017, the Constitutional Court adopted the Judgement in the case of “Citizen of Georgia – Lali Lazarashvili v. The Parliament of Georgia” (constitutional complaint №642).

The subject of dispute in this case was constitutionality of Article 70(1) and Article 77(1) of the Organic Law of Georgia on Common Courts with regard to Article 14 of the Constitution of Georgia.

Article 70(1) of the Organic Law of Georgia on Common Courts provides for entitlement to state compensation for those judges of the Supreme Court, whose powers were terminated due to expiration of the term of office or reaching the retirement age. Under Article 77(1) of the same Law, the right to state compensation is also granted to those judges, whose powers were terminated in the period from 1 January 2005 until 1 January, 2006 based on the personal application.

The complainant's powers as of the member of the Supreme Court were terminated on the basis of her personal application in 2010. Therefore, she considered that due to the disputed provisions she was in a discriminatory situation, which violated right to equality before the law enshrined in the Constitution of Georgia. Moreover, during the hearing for examination of the case on merits, the complainant specified, that she applied for eradication of differentiation through granting her the right of compensation, not through revoking the right of compensation of persons already falling within the above-mentioned categories.

The respondent explained, that it is discretionary power, not obligation of a state to grant the right to state compensation. Entitlement to compensation is related to such objective grounds, as reaching the retirement age or expiration of term of office, whereas termination of office on the ground of personal application does not present such a circumstance. In view of the above-mentioned, the named categories of persons are not substantially equal and right to equality before law is not violated in their case. At the same time, the respondent recognized the constitutional complaint in the part, where claim referred to constitutionality of Article 77(1) of the Organic Law of Georgia on Common Courts of Georgia with regard to Article 14 of the Constitution of Georgia.

Based on the analysis of the competence and mandate of the Constitutional Court of Georgia, which is determined by the Constitution, the Court stated, that it is a negative legislator. Its task is to carry out constitutional review and to invalidate unconstitutional provision and/or its parts or normative content. The Constitutional Court is not authorized to form a new legal order, to adopt new rules, including constitutional rules or widen the scope of application of the disputed provision. This is not compatible with the constitutional principle of separation of powers.

The disputed provisions provide for right to state compensation for some former members of the Supreme Court of Georgia. They do not prohibit provision of compensation to some other members of the Supreme Court. Therefore, the Constitutional Court declared, that the disputed provision does not contain the normative content, invalidation of which would lead to appointment of compensation for the complainant.

Thus, the claim of the complainant is not related to invalidation of any normative content of the disputed provision, but creation of a new normative order, in which she would also be entitled to receive the state compensation. Thus substantially, the complainant requested a measure identical to positive action of adding a rule to the legislation, which the Constitutional Court is not authorized to do.

Therefore the Constitutional Court did not uphold the constitutional complaint №642.

The concurring opinions of the Members of the Constitutional Court – Giorgi Kverenchkhiladze and Maia Kopaleishvili, as well as dissenting opinion of the Judge, Lali Papiashvili is appended to the Judgement.

LLC „Broadcasting Company Rustavi 2“ and LLC „Television Company Sakartvelo“ v. The Parliament of Georgia

On 29 December, 2017, the Grand Chamber of the Constitutional Court of Georgia adopted the Judgement in the case of “LLC “Broadcasting Company Rustavi 2” and LLC “Television Company Sakartvelo” v The Parliament of Georgia” (constitutional complaint N679).

The subject of the dispute in this case was constitutionality of Articles 54 and 55 of the Civil Code of Georgia with regard to Article 16 and Paragraphs 1 and 2 of Article 21 of the Constitution.

The complainant stated, that Article 54 of the Civil Code of Georgia, which provides for voidness of contracts which are against “norms of morals” and “public order”, contradicts the right to property and right to free development of personality.

The complainants asserted, that the terms of Article 54 of the Civil Code of Georgia, “public order” and “norms of morals” have subjective content and give a judge unjustifiably wide discretion to define the substance of these terms in each individual case. Moreover, the normative content of the disputed rule, which, declares a deal void, based solely on the inadequate price of the deal is unconstitutional. The parties of a deal should have full opportunity to determine the price of a deal without any interference from the State.

The complainant asserted at the oral hearing on merits, that they considered unconstitutional the text of Article 55 of the Civil Code of Georgia that was in force until 8 May, 2018. In view of the complainants, it was true that Article 55 of the Civil Code of Georgia was amended on 8 May, 2012, however if interpreted together with Article 6 of the Civil Code of Georgia, it can still be considered as effective legal act with regard to those deals, which were executed within the period when the old version of the disputed provision was in force. The complainant referred to the non-uniform interpretation of Article 55 of the Civil Code of Georgia. In his opinion, in view of the existing case law, the focus is on disproportionality of price and no regard is given to the second imperative premise provided in this Article – abuse of power and exploitation of naivety of the other party.

In view of the respondent, the use of broad legal terms like “norms of morals” in civil law is caused by objective reasons. Disproportionality of the price of a deal, under the disputed provision, is not an independent premise for voidness of a deal and presence of other

preconditions is also required. The respondent also pointed out, that the Constitutional Court of Georgia did not admit for consideration on merits the text of Article 55 the Civil Code of Georgia, which was in force until 8 May, 2012

Reviewing this dispute, in the first place, the Constitutional Court identified the claim raised in the complaint and pointed out, that the complainant alleged unconstitutionality of determination of content and scope of property rights based on the rules of general character and referred to incompatibility of such regulations with the principles of legal security and certainty. Hence, this Judgement is seminal as far as the Court considered and evaluated whether Constitution allows for regulation of contractual relationships on the basis of general rules. Furthermore, the Constitutional Court reviewed the rules regulating civil law relations with regard to the standard of legal certainty.

Elaborating on the issue of certainty of the disputed provisions, the Constitutional Court differentiated between standards of certainty applicable to the rules prescribing liability, rules of public law and rules of civil law. The Court pointed out that setting forth the grounds of voidness of contracts the State does not impose any type of liability or prohibition, violation of which would be punished with sanction. On the contrary, the rules determining the voidness of contracts apply to those cases, where the State refuses to interfere in the relations between individuals and to coerce one party to carry out certain activities in favour of the other party. Therefore the requirement of the degree of certainty applicable to the rules regulating civil law should not be as strict, as the criteria that should be met by the rules prescribing legal liability. The Constitutional Court also emphasized the importance of flexibility of the rules of civil law and the risks associated with introducing rigid legislation to regulate this area.

The Constitutional Court interpreted, that the law of contracts applies to wide area of relations, substance and scope of which entirely depend on the acts and will of individuals. In view of ever-developing social and economic relations it is impossible to determine in advance, what type of contract will be concluded by parties; it is also impossible to identify in advance and exhaustively those contracts enforcement of which conflicts with pubic interests. The Court interpreted that the goal of general rules is to regulate civil law relations as comprehensively as possible and to establish fundamental principles of civil circulation, which would provide for legal solution for any type of contractual relations. As in certain cases, solution for contractual relation without its direct, specific regulation is inevitable necessity, the Constitutional Court pointed out that in absence of general rules it would be necessary to either regulate any civil law relation in a maximally detailed manner, that would impede full operation of dynamically developing civil circulation, or to use analogy of statutes and/or law, which would reduce the degree of legal certainty even more. Therefore the Constitutional Court of Georgia did not share the position of the complainant, asserting that general nature

and vagueness of the content of disputed provisions constituted self-sufficient ground for finding it unconstitutional.

The complainant also referred to the terms present in Article 54 of the Civil Code of Georgia – "public order" and "morals", which in their view, are matter of subjective evaluation and ascertaining their content depends of personal convictions of a judge, which grants them unfettered discretion.

In this regard, the Constitutional Court interpreted, that Article 54 of the Civil Code of Georgia provides the most general ground of voidness of deals, the goal of which is not to leave unregulated the situation, where the enforcement of a deal is essentially at conflict with the fundamental purposes of the contractual law, but it does not fall under the grounds of voidness set forth in other rules.

The Constitutional Court of Georgia did not share the argument of complainants, according to which, the disputed rule grants unreviewable discretion to a judge and they can give the rule any content desirable to them. According to the interpretation of the Constitutional Court of Georgia, applying the disputed rule, the measure of evaluation used by the judge cannot be their personal conviction about appropriateness of a behaviour and/or how the judges themselves would behave in respective cases. Judges should evaluate whether the deal itself, its content, is acceptable in view of the established morals of the public and general requirements of public order. The Court indicated, that the disputed rule can be interpreted not according to the subjective views of a judge, but systemically, in the context of other rules and legal principles, while the appropriateness of each interpretation made by a judge can be objectively checked and reviewed by the courts of upper instances. Compliance with the Constitution of each interpretation is ascertained by the Constitutional Court case by case. The Constitutional Court also pointed out, that the grounds of voidness of a contract as general as the terms "public order" an "morals" is not uncommon for the legislation of various other countries, including the states of continental Europe and the United States. This, in its turn, shows the general consensus among civilized states on this issue.

The complainant referred to unconstitutionality of the normative content, according to which a deal is void based solely on inadequacy of a price of a deal. In this regard, the Constitutional Court took into account the established case law of the Supreme Court of Georgia; namely, it referred to the Judgement (Case №ას-664-635-2016) of the Grand Chamber of the Supreme Court of Georgia of 2 march, 2017, according to which solely the price of a deal cannot serve as ground of voidness of a deal under Article 54 of the Civil Code.

According to the Judgement of the Constitutional Court of Georgia, the judgement of the Supreme Court of Georgia is mandatory for the courts of all instances. No court is empowered to interpret Article 54 of the Civil Code differently from the interpretation of the Grand Chamber of the Supreme Court and to declare a deal void based solely on the inadequacy of its price. Thus the Constitutional Court of Georgia declared, that there is no lawful way of

applying Article 54 of the Civil Code of Georgia with the normative content challenged by the complainant.

Based on the analysis of the constitutional complaint №679, the text of normative legal act annexed to it and the Recording Notice №1/3/679 of the Constitutional Court of Georgia, the Court ascertained that the present constitutional complaint was admitted for consideration on merits with regard to Article 55 of the Civil Code of Georgia, only in part which challenged the constitutionality of the version of Article 55 of the Civil Code of Georgia which was currently in force, not the version, which was in force from 25 November, 1997 until 25 May, 2012. Therefore, within this case, the Constitutional Court of Georgia was not authorized to review the issue of constitutionality of the text of Article 55 which was in force from 25 November, 1997 until 8 May, 2012. The representative of the complainant stated at the oral hearing on merits, that they considered as problematic the text of Article 55 of the Civil Code of Georgia, that was in force until 8 May, 2012 and they did not bring the arguments against the challenged version of Article 55.

In view of all the above-mentioned, the Constitutional Court did not uphold the constitutional complaint №679.

The dissenting opinion of the Members of the Constitutional Court – Irine Imerlishvili, Giorgi Kverenchkhiladze, Maia Kopaleishvili and Tamaz Tsabutashvili is appended to the Judgement.

„Citizen of Georgia Oleg Latsabidze v. The Parliament of Georgia“ (Constitutional Complaint N626)

on 17 October, 2017 the Constitutional Court adopted the Judgement in the case of “Citizen of Georgia, Oleg Latsabidze v. The Parliament of Georgia” (constitutional complaint №626).

In this case, the subject of dispute was the constitutionality of the words “dismisses from the position” of Paragraph 1 and Paragraph 4 of the Article 60 of the Code of Local Self-Government (the version in force on 6 February, 2015) with Paragraphs 1 and 2 of Article 29 of the Constitution of Georgia.

The complainant considered problematic the rule provided in the disputed provisions, which authorized a head of executive body of local government/mayor to dismiss without provision of reasons a head of a structural unit of the municipal office. On the other hand, according to the disputed rules, powers of a head of structural unit of a municipal office would automatically terminate from the moment of election (taking of office) of a new head of executive body of local government/mayor. The complainant stated, that it is possible to

differentiate the standards for dismissal from the occupied position depending on whether a person is political or career official. At the same time, a head of the structural unit of a municipal office is a career official and the challenged regulation interferes in their right to work in the public office without impediment.

According to the explanation of the respondent, the Parliament of Georgia, the challenged rule served the goal of efficient administration of local self-government. Moreover, certain functions of a head of structural unit leads to application to them different rules of dismissal from their position, from what apply to other career officials. In addition to the above-mentioned, the respondent asserted, that the goal of above regulation was to ensure possibility to change the human resources in public offices after each elections.

The Constitutional Court pointed out, that public offices differ from each other in view of their nature. Therefore the constitutional standards should also differ depending on whether a given position has political or professional nature. Based on the relevant legislation, the Court decided, that a head of the structural unit of a municipal office is a career official. Moreover, the main requirement for professional position is official's qualification, experience, personal skills and so forth. Therefore, for efficient functioning of the local self-government it is crucial to employ and maintain professional (career) personnel. Therefore, a rule, which allows for automatic termination of office of a respective official without review or evaluation of their qualifications, experience or other skills from the moment of taking of office by a new head of executive body of local government or mayor, constitutes an unjustified interference in the right to work in a public office enshrined in the Constitution.

The Constitutional Court did not share the argument of the respondent party with regard to the necessity of possibility to substitute the personnel after each election. The Court declared, that the presence of democracy implies in the first place government by the people, implementation of public powers by the people directly or through their elected representatives. At the same time, having a democratic state does not imply substitution of all public officials with the new personnel and members of the political group of newly elected public official after each election. Not only this is not required by democracy, but also it is at conflict with democracy as a matter of principle. Therefore the Court decided that it is not a Constitutional requirement to make available an actual opportunity to substitute the professional personnel after each election and it cannot serve as ground for limiting the requirements of Article 29(2) of the Constitution.

The Court noted with regard to the unreasoned dismissal of heads of structural units of municipal offices, that after the examination of the relevant circumstances of this case the legitimate aim of this restriction was not discerned and the rule was declared unconstitutional.

In view of the above-mentioned, the Constitutional Court upheld the constitutional complaint №626.

„The Citizen of Georgia Nodar Dvali v. The parliament of Georgia“ (Constitutional Complaint N550)

On 17 October, 2017, the Grand Chamber of the Constitutional Court adopted the Judgement in the case of "Citizen of Georgia, Nodar Dvali v. The Parliament of Georgia" (constitutional complaint №550) and partially upheld the claims raised in the complaint.

In the constitutional complaint №550 the complainant asked for declaration as unconstitutional of Article 185 and Article 312(2) of the Civil Code of Georgia with regard to Paragraphs 1 and 2 of Article 21 of the Constitution of Georgia.

The disputed provisions provided the rules protecting the conscientious buyer in case of transfer of a property by a person who is incorrectly registered as owner in the public register. More specifically, according to Article 185 of the Civil Code, in view of the interests of acquirer, the transferor is considered to be the owner, if s/he is registered as such in the public register, unless the acquirer knew that the transferor was not the owner. Moreover, Article 312(2) of the Civil Code, states that in favour of a person, who acquires property from the person incorrectly registered as owner in the public register, entry of the register is presumed to be correct, except for the cases, when the complaint is pending against the entry, or the acquirer knew that the entry was inaccurate.

The complainant requested to find the disputed provisions unconstitutional, as they excluded the right of a genuine owner to recover their ownership on wrongfully transferred real property. Moreover, the complainant explained, that neither the case law of the Supreme Court of Georgia, nor the legislation provided for an opportunity to retrieve the ownership by a genuine owner; in case of dispute, the conscientious acquirer was always privileged and the right to property of the original owner was left unsecured. The complainant referred to the present legal regime of movables and asserted that the rule of acquisition of immovable property should be analogous to the rule applicable to movables. More specifically, the complainant considered that it would be constitutional, if a conscientious acquirer would not be able to become the owner of the property, if the property was transferred out of the possession of its original owner against their will.

The respondent party explained, that the disputed regulation constituted a mechanism to strike a fair balance between the interests of a conscientious acquirer and the original owner. It serves the stability of civil circulation, reliability of records of civil register and insurance of simplicity and low cost of the process of acquisition of property. Despite the fact, that the right of ownership on the immovable property is transferred to the conscientious acquirer, the original owner can claim compensation of damages from the person, whose actions led to loss of right of ownership of the original owner.

The Constitutional Court of Georgia identified the claim raised in the complaint, in the first place and explained, that Article 185 of the Civil Code of Georgia deals exclusively with the cases of transfer of property right on the immovable property, while Article 312 has a broader scope and applies to the rights registered in the public register in general. Moreover, the disputed provisions protect the conscientious acquirer in every case of conclusion of deals based on payment of price. However, in view of the claims brought before the Constitutional Court, it only reviewed the constitutionality of that normative content of the disputed provisions, which protects the conscientious acquirer in conclusion of market deals on immovable property, that is with regard to those transactions, which is concluded between the two independent actors at the market and in which both parties act to ensure their best interests and to profit.

The Constitutional Court reviewed the constitutionality of the disputed provisions based on the principle of proportionality and pointed out that the disputed provisions served achievement of the valuable legitimate aim, which is insurance of stability, ease and low cost of civil circulation. However, in addition to the public interests of stability and ease, in this case there is a conflict between the interests of two individuals. The right of ownership on the real estate of an original owner is opposed to the interests of a conscientious acquirer. Therefore, the both conscientious actors have legal claim on the disputed property. At the same time, in case of any legal solution, it is inherently impossible to fully satisfy the interests of the both parties. Therefore, as the conflict of interests in inevitable, it entails the need of harmonization and fair balance. Therefore, the Court examined whether there was reached such a balance between the restricted right and the legal good secured as a result of this restriction.

The Constitutional Court interpreted, that obliging the conscientious acquirer to check every circumstance excluding the right of a registered owner in the process of acquisition of immovable property would make meaningless the existence of the public registry and also have significant chilling effect on the process of acquisition of property. In case of presence of such regulation, it would be necessary to collect and examine the whole chain of transactions

and related documents, which is related to additional costs and time. Lack of such safeguards for protection of conscientious acquirer, as are provided in the disputed provisions would also increase the costs and complicate to certain extent concluding deals on real estate. At the same time in case of total lack of safeguards for conscientious acquirer, the original owner would have less incentive to demand the correction of entry in case of incorrect registration of his or her property on another person's name and to bring the respective complaint, which would complicate the identification and eradication of incorrect entries present in the public register. Therefore the Court interpreted, that the regulation which privileges the conscientious acquirer vis-a-vis the owner of a property, does not disturb the fair balance between the private and public interests.

The Constitutional Court also noted, that the regulation should not incentivize reckless attitude of the acquirer towards the correctness of records of the public register. The legislator should not establish such system, in which the acquirer can ignore the information available to him raising questions about the correctness of the entries of the register. In view of the Court, if the acquirer is informed about the ongoing dispute about the correctness of an entry in the public registry, they should verify the right of the person, who transfers the property to them, or bear the risk generated by the inaccuracy of the entries of the public register. Presence of a complaint brought against the entry of the public register shows, that the real owner of the disputed property undertook due measures to eradicate the inaccuracy of the entry of public registry. The Court interpreted, that the goal of protection of the conscientious acquirer is to avoid artificial barriers on the purchase of property, however the regulation offered by the legislator should not rule out the minimal, reasonable obligation of checking, which accompanies the transactions related to real property. The Constitutional Court noted, that protection of an acquirer and considering them as conscientious should be excluded in case, there is a complaint pending and at the same time, the acquirer knows about it. The Court also interpreted what the complaint brought against the entry in the register should imply and declared that it can be: a. administrative dispute on making incorrect entry in the register or b. civil dispute about the ownership of a real estate.

The Constitutional Court interpreted that the regulation provided in Article 185 of the Civil Code of Georgia is different from the rule provided in Article 312(2). Article 185 of the Civil Code of Georgia sets forth the knowledge by the acquirer, that the person, who transfers the property is not an owner, as the only obstruction to transfer of ownership to the acquirer. Hence, the awareness about the pending complaint against the entry of the register does not prevent considering the acquirer as conscientious and transfer of ownership to him. The Constitutional Court decided, that Article 185 could be applied independently and there was

a risk to consider a person as conscientious even if they knew about the pending complaint against the entry of the register. The Constitutional Court interpreted, that when the acquirer is informed about the dispute on the accuracy of the entry of the register, they must check the information about veracity of the right and bear the risk of voidness of the entry themselves.

Article 185 of the Civil Code of Georgia led to loss of ownership by the owner in more cases, than it was objectively necessary to achieve a legitimate goal. Therefore, the Constitutional Court found unconstitutional its normative content, according to which, "person who transfers the property to another is presumed to be the owner, if s/he is registered as such in the public registry" even when, there is a complaint pending against the entry of the register and this fact is known to the acquirer.

The dissenting opinion of the Judges – Giorgi Kverenchkhiladze, Irine Imerlishvili and Maia Kopaleishvili is appended to the Judgement.

„Citizen of Georgia Omar Jorbenadze v. The Parliament of Georgia " (Constitutional Complaint N659)

The Constitutional Court of Georgia upheld the constitutional complaint (N659) of the citizen of Georgia, Omar Jorbenadze versus the Parliament of Georgia on 15 February, 2017.

The rule challenged by the complainant provided for appointment of the judges of the appellate and district/city courts for three years prior to their lifetime appointment as judges. Only upon expiration of this term would the High Council of Justice adopt a decision on lifetime appointment of a judge.

In view of the complainant, the disputed provision was unconstitutional, as no trial period before lifetime appointment should be applied to those persons, who already had at least three-year experience of serving as judge. The respondent explained, that it was legislator's intent to set the high standards for lifetime appointment of judges, which at the end of the day served the independent and competent administration of justice.

The Constitutional Court stated in its Judgement, that appointment of a judge for the defined period was related to examination of those skills and features of a person, which would be difficult to explore without the analysis of the practical work of a judge. However, there are candidates for judgeship, who already have three-year experience as a judge. Therefore it is possible to evaluate the work they have done as judges and to ascertain in this way if the candidate meets the high standards applicable to the office of a judge. Thus in case of those persons, who already have 3-year experience of serving as judges and it is objectively possible to study their work, additional application of the period defined in the disputed provision was considered as unjustified barrier and was declared as unconstitutional with regard to Article 29(1) of the Constitution.

Moreover, the Constitutional Court also indicated that for the purposes of lifetime appointment of judges candidates of judgeship who have no less then three-year experience of serving as judges and the candidates, who do not have such experience are substantially unequal. The disputed provision, while setting forth the general rule of appointment of judges, treats unequals equally without objective need and thus contradicts the right to equality under Article 14 of the Constitution of Georgia.

In view of all the above-mentioned, the Constitutional Court of Georgia declared unconstitutional that normative content of Article 36(4[1]) of the Organic Law of Georgia on Common Courts, which provided for appointment for three years of judges of appellate and district (city) courts, who were former judges or currently serving as judges and had experience of serving as judges for no less then three years.

The Constitutional Court did not rule out, that in certain cases, if a long period has passed since serving as a judge or there are other objective circumstances, it may be difficult or impossible to evaluate the past work of a candidate. Moreover, undertaking of evaluation of the past work of a candidate for judgeship requires due legislative regulation. Therefore the Constitutional Court decided, that the legislator should be give a reasonable time, in order to fulfill its constitutional obligation and draft the legislative regulation, which would protect constitutional rights of a person, on the one hand and would avoid damage to the public interest, namely exclude the risk, that unfit candidates would be appointed as judges for their lifetime, on the other hand. In view of this the disputed provision was declared invalid from 1 July, 2017.

ii. Judgements of the First Chamber

The Judgements Adopted with Regard to the Drug Offences

The Judgement №1/4/592 of the Constitutional Court of Georgia of 24 October, 2015 was the first case, where the Court had to adjudicate the issue of constitutionality of punishment applicable for the drug crime. In this case, the Court upheld the complaint of the citizen of Georgia, Beka Tsikarishvili and declared unconstitutional the normative content of the disputed provision, which allowed sentencing to imprisonment for purchase and storage of up to 70 grams of the narcotic drug - dry marijuana for personal consumption purposes. It is noteworthy, that from adoption of this Judgement till present, the Constitutional Court has reviewed 5 more constitutional complaints and has upheld all the five of them. These judgements are characterized with a similar structure and reasoning, as well as distinct features. In this respect, particular attention should be given to the Judgement №1/13/732 of the Constitutional Court of Georgia of 30 November, 2017, where in contrast to other cases,

the Court did not consider the constitutionality of statutory sentence for a certain crime, but considered the constitutionality of imposition of criminal liability for a specific action – consumption of marijuana. The Judgement adopted with regard to the constitutional complaint №725 is also worth of noting separately, as the Court considered, that manifestly disproportional punishment for the crime provided in the disputed provision was not imprisonment, as the type of punishment, but the degree of punishment – imprisonment from 6 to 12 years.

In addition to the named judgements, the Constitutional Court adopted number of rulings, which declared unconstitutional those sentences for the acts of drug offences, which constituted the overruling provisions of the judgements of the Constitutional Court of Georgia. Some of the important standards, which the Constitutional Court set forth in these judgements will be discussed below.

According to the interpretation of the Court, "the Constitutional Court is obliged to review the sentencing policy in that extreme case, when it causes violation of a human right" (Judgement №1/4/592 of the Constitutional Court of Georgia of 24 October, 2015 in the case of "Citizen of Georgia Beka Tsikarishvili v. The Parliament of Georgia", II-34).

The Constitutional Court ruled, that manifestly disproportional sentences contradict the clause of Article 17(2), according to which inhuman, cruel or degrading punishment is prohibited. "Manifestly disproportional sentences, which are inadequate to the nature and gravity of an offence, not only are related to the constitutional prohibition of cruel, inhuman and degrading treatment and punishment, but also violate this constitutional provision" (Judgement №1/4/592 of the Constitutional Court of Georgia of 24 October, 2015 in the case of "Citizen of Georgia Beka Tsikarishvili v. The Parliament of Georgia", II-25).

According to the established practice of the Constitutional Court, the constitutional review of punishments is based on the following criteria: 1. manifest disproportionality between gravity of offence and the sentence provided for it is reviewed – the sentence set forth in the legislation for a given act should be reasonable and proportional to the damages, that was caused or may be caused by the crime to individuals/society. The sentence will be considered as manifestly disproportional, inhuman and cruel punishment if its duration is sharply, grossly disproportional to the degree of wrongfulness and dangers that might be entailed by an action. 2. The law should allow a judge to take into account specific circumstances of a case, the damages caused by an action, degree of culpability, etc., in sentencing, in order to exclude in practice imposition of disproportional sentences without consideration of all the relevant factors/circumstances (Judgement №1/4/592 of the

Constitutional Court of Georgia of 24 October, 2015 in the case of "Citizen of Georgia Beka Tsikarishvili v. The Parliament of Georgia", II-38).

Reviewing the nature of drug offences, the Constitutional Court declared that "it is meaningless and thus unjustified to sentence a person to criminal punishment of imprisonment for an action, which can only cause damage to his or her health" (Judgement №1/4/592 of the Constitutional Court of Georgia of 24 October, 2015 in the case of "Citizen of Georgia Beka Tsikarishvili v. The Parliament of Georgia", II-84). "Punishment of a person for merely harming their own health is the form of paternalism demonstrated by the state, which is not compatible with the free society" (Judgement №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", II-50).

Judgements Adopted in 2017

On 13 July, 2017 the First Chamber of the Constitutional Court of Georgia adopted the Judgement in the case of "Citizen of Georgia, Lasha Bakhutashvili v. The Parliament of Georgia" (constitutional complaint №696). On 14 July of the same year, the First Chamber adopted the Judgement in the case of "Citizens of Georgia, Jambul Gvianidze, Davit Khomeriki and Lasha Gagishvili v. The Parliament of Georgia" (constitutional complaints: №701, №722, №725). On 30 November, the Judgement in the case of "Citizen of Georgia, Givi Shanidze v. The Parliament of Goorgia" was pronounced (constitutional complaint №732).

„Citizen of Georgia Lasha Bakhutashvili v. The Parliament of Georgia" (constitutional complaint №696).

The subject of dispute in the constitutional complaint №696 is the constitutionality with regard to Article 17(2) of the Constitutional of Georgia of that normative content of Article 260(3), which allows for meting out criminal sentence of imprisonment from 5 to 8 years for preparation, purchase and storage of large amount of narcotic drug – desomorphine.

Reviewing the claim stated in the constitutional complaint №696, the Constitutional Court had to review the given reality and find out whether the sentence applicable for manufacturing, purchase and storage of 0,00009 grams of desomorphine was manifestly disproportional punishment and hence violated Article 17(2) of the Constitution.

Based on the analysis of the legislation of Georgia, the Constitutional Court ascertained, that the law did not define small amount or the minimal amount required to trigger criminal

liability for desomorphine; as a result any amount of this narcotic drug, which did not exceed 1 gram, qualifies as large amount, regardless of whether it was usable for consumption. The Court interpreted that the hazard associated with desomorphine for human health is caused by the possibility of its consumption. It was also noted, that the above-mentioned legal good can only be endangered if that amount of desomorphine is available which involves objective opportunity of its consumption.

The Constitutional Court ascertained, that 0,00009 grams of desomorphine, in view of its very small, microscopic amount, does not entail the danger of its consumption and/or sale. Furthermore, the Court explained, that manufacturing of 0,00009 grams of desomorphine would be illogical and purposeless act of a respective person. The Court stated that traces of desomorphine in the above-mentioned amount on various objects may indicate the fact of manufacturing, purchase or storage of this narcotic drug in the amount, that could be used for consumption, while taken separately, fact of preparation, purchase and/or storage of 0,00009 grams of desomorphine does not *per se* involve any danger that would justify sentencing to imprisonment.

In view of all the above-mentioned, the Constitutional Court declared unconstitutional the normative contents of the disputed provision, which allowed for sentencing to imprisonment, as a criminal punishment for manufacturing, purchase and storage of 0,00009 of narcotic substance – desomorphine with regard to Article 17(2) of the Constitution of Georgia.

„Citizens of Georgia Jambul Gvianidze, Davit Khomeriki and Lasha Gagishvili v. The Parliament of Georgia“ (Constitutional Complaints: №701, №722, №725)

The author of the constitutional complaint №701 applied for declaration as unconstitutional of the normative content of Article 265(2) of the Criminal Code of Georgia, which allowed for sentencing to imprisonment as a criminal punishment for illegal sowing, growing or cultivation of large amount of narcotic drug - cannabis (plant) with regard to Article 17(2) of the Constitution of Georgia.

Complainants in the constitutional complaints №722 and №725 applied for declaration as unconstitutional of that normatie content of Article 265(1) of the Criminal Code of Georgia, which provides for imprisonment as punishment for unlawful sowing or growing of a narcotic drug – cannabis (plant) and declaration as unconstitutional of the normative content of Article 265(2), which provides for imprisonment as punishment for unlawful sowing and growing of the large amount of narcotic drug – cannabis (plant) with regard to Article 17(2) of the

Constitution of Georgia. The author of the constitutional complaint №725 also asked for declaration as unconstitutional of the normative content of Article 265(3) of the Criminal Code of Georgia, which provided for imprisonment as punishment for illegal sowing or growing of particularly large amount of narcotic drug – cannabis (plant) with regard to Article 17(2) of the Constitution of Georgia.

According to the constitutional complaints №701, №722 and №725, the complainants were found in possession of 150,72 grams, 63,73 grams and 265,49 grams of cannabis respectively. In view of this, in the abovementioned case the Court reviewed the sentencing to imprisonment, as type and degree of punishment for sowing, growing and cultivation of the above-mentioned amounts of cannabis for personal consumption purposes. The Constitutional Court drew a distinction between the danger entailed by sowing, growing and cultivation of certain amount of cannabis (plant) to the owner of the plant, on the one hand and the danger, which these actions may cause for other people, on the other hand. Based on the testimonies of witnesses and specialists, the Court decided that the use of products of cannabis could involve potential risks for human health. Moreover, it was ascertained, that the danger, which the consumption of products of cannabis may cause for its consumer is lighter compared with the harm caused by consumption of other, so-called hard narcotic drugs. The Court reiterated the standard already established by it and declared that it is purposeless and therefore, unjustified to sentence a person to imprisonment, as criminal punishment for an act, which can only cause danger for their health.

Based on the evidence brought before it, the Court ascertained that there is no irrefutable link between consumption of products of cannabis and commission of other crimes. The Court also indicated, that it was not proved either, that the link between the consumption of products of cannabis and commission of other crimes is more frequent and obvious, then in case of alcoholic intoxication, for example.

The Constitutional Court evaluated separately the inherent dangers of distribution associated with the disputed amounts of cannabis. It ruled, that 63,73 grams (the constitutional complaint №722) and 150,72 grams (constitutional complaint №701) of cannabis cannot be considered to be that amount, which involves the inherent risk of its distribution. In view of all the above-mentioned, the Court considered, that sentencing to imprisonment, as a punishment for the acts of sowing and growing of 63.73 grams of cannabis and sowing, growing and cultivation of 150,72 grams of cannabis constituted manifestly disproportional punishment and therefore contradicted Article 17(2) of the Constitution of Georgia.

The Court indicated, that sowing and growing of 265,49 grams of cannabis lead to high risks of its distribution. As the sentence prescribed for growing of the mentioned amount of

cannabis served the protection of health of others, the Court found it constitutional to sentence a person to imprisonment as type of punishment for the mentioned act. However, based on the comparison with sanctions prescribed for other more serious crimes, stated in the Criminal Code of Georgia, the Court arrived at the conclusion, that the given length of the prescribed punishment for growing of 265,59 grams of cannabis – imprisonment from 6 to 12 years was manifestly disproportional punishment and was incompatible with Article 17(2) of the Constitution of Georgia.

„Citizen of Georgia, Givi Shanidze v. The Parliament of Georgia“ (Constitutional Complaint №732)

In the constitutional complaint №732, the subject of dispute was the constitutionality with regard to Article 16 of the Constitution of Georgia the normative content of Article 273 of the Criminal Code of Georgia, which provided for liability for consumption of narcotic drug, marijuana. The Constitutional Court had to evaluate in this case constitutionality of criminalization of the act of consumption of narcotic drug – marijuana.

The Constitutional Court indicated, that right of a person to choose the type of recreation according to their preferences and to undertake respective activities, including consumption of marijuana, falls within the protected scope of personal autonomy.

The Constitutional Court stated, that the respondent failed to bring the evidence from the verified scientific studies or life experiences, based on which the Court could conclude, that being under the influence of marijuana or in the condition of abstinence, led to heightened risks of commission of crime and/or violation of public order. In view of this, the Court considered that punishment of individual cases of consumption of marijuana could not be considered as the suitable means for protection of public order. Moreover, the respondent failed to provide any evidence based on the scientific studies that would show, that marijuana, due to its biological or chemical properties, led to the development of need for other narcotic drugs.

The Constitutional Court noted, that taken separately, the fact of consumption of marijuana, in view of the nature of this act, is involving little danger to public interest, as there is not even theoretical chance of distribution of narcotic drug. Moreover, in view of the fact, that consumption of the narcotic is preceded by its purchase and/or preparation, the Court considered, that prohibition of consumption of marijuana is a step towards protection of public health. However, imposition of criminal liability to prevent a person to harm his or her own

health is the form of paternalism demonstrated by the state, which is not compatible with the free society.

The Constitutional Court decided, that the disputed provision prescribed criminal liability for repeated consumption of marijuana in a blanket manner and without any exceptions, regardless of place and situation of consumption, the person, committing an act and realism of danger for public order. In view of all the above-mentioned, the Constitutional Court considered, that the disputed provision was incompatible with the right to free development of personality enshrined in Article 16 of the Constitution.

„Citizen of Georgia, Edisher Goduadze v. The Minister of Inferior of Georgia“ (Constitutional Complaint N622)

On 9 February 2017, the First Chamber of the Constitutional Court of Georgia adopted the Judgement in the case of "Citizen of Georgia, Edisher Goduadze v. The Minister of Interior of Georgia" (constitutional complaint N622).

The subject of dispute in this case was the constitutionality with regard to Article 16 and Article 20(1) of the Constitution of Georgia of Article 15(1) of the Order №271 of the Minister of Interior of Georgia of 1 March, 2006 on Approval of Instruction on Uniform Registration of Administrative Offences, Operation of Information Bank and Registration-Analytical Activities in the Ministry of Internal Affairs.

In view of the complainant, the rule stated in the disputed provision, which provides for permanent storage of electronic entries in the uniform information bank of administrative offences is incompatible with the right to free development of personality. According to the arguments of the complainant, blanket nature of a rule, as well as the fact, that it does not provide for judicial oversight, are the reasons due to which the challenged rule does not meet the constitutional safeguards applicable in case of restriction right to privacy.

At the oral hearing on merits, the representative of respondent pointed out, that the disputed rule is important not only with regard to a specific offence - for adequate response in case of its repeated commission, but it also serves common public good – generalization of available data, identification of possible risks and dangers and detection of the main trends of illegal activities, on which the state should base its response strategy. Moreover, in the process of reviewing its constitutionality, the strictly restricted nature of access to the protected information should be taken into account.

The Constitutional Court drew the distinction in the first place between the components of the rights to privacy protected in Article 20 and Article 16 of the Constitution and pointed out, that the scope of Article 20(1) of the Constitution aims at content-based protection of the specific components enlisted in this Article. The general term of "private life" mentioned there

only serves extension of this constitutional rule to new cases, which by their nature fall within the scope of this rule. This constitutional provision protects the private sphere of an individual and prohibits penetration in this sphere and obtaining of information about the person without due constitutional grounds. The Court noted, that the disputed rule only regulates storage of information, not its obtaining. Therefore the disputed rule did not interfere within the scope of Article 20 of the Constitution and its constitutionality was reviewed with regard to Article 16 of the Constitution.

The Constitutional Court explained, that any action, which qualifies as administrative offence contains certain public danger for the future. To address these dangers there might be a logical need for registration of information for protection of legal order and public safety in the rule of law state. At the same time, while achieving the above-mentioned legitimate aims, the State is obliged to meet the requirements of the principle of proportionality.

The Court ruled, that permanence of storage of information about administrative offences provided by the disputed provision, does not constitute the necessary and therefore, proportional means of achieving the named legitimate aim. Pursuant to the disputed regulation, the state stored information about persons even in case, when there was no need for it, for enforcement of administrative sanction and/or for application of a different sanction to the offender in case of repeated commission of an offence by a person, who has already been imposed an administrative sanction. In such case, storage of the data only leads to the danger of its distribution or its abuse in any other manner and the named legitimate aim can be achieved through employing a less intense means.

The Constitutional Court also indicated, that the regulation provided in the disputed provision has a blanket nature and does not take into account intensity and nature of a committed administrative offence in the process of storage of information about administrative offences, which also highlights the disproportional restriction of the right to free development of personality.

In view of all the abovementioned, the Constitutional Court of Georgia upheld the constitutional complaint N622 and the disputed provision was declared unconstitutional with regard to Article 16 of the Constitution of Georgia.

„Citizens of Georgia, Nadia Khurtsidze, Dimitri Lomidze and Tariel Chochishvili v. The Parliament of Georgia“ (Constitutional Complaints N650, N699)

On 27 January 2016, the First Chamber of the Constitutional Court of Georgia adopted the Judgement in the case of “Citizens of Georgia, Nadia Khurtsidze, Dimitri Lomidze and Tariel Chochishvili v. The Parliament of Georgia”.

The subject of dispute in the above-mentioned case was the constitutionality of Paragraphs 1 and 4 of Article 136 of the Criminal Procedure Code of Georgia with regard to Article 40(3) and Paragraphs 1 and 3 of Article 42 of the Constitution.

The complainants asserted, that the disputed provision restricted the possibility of defense party at the criminal trial, to apply to the court with the motion to subpoena the information stored in the computer system or on the device of storage of computer data or documents, whereas this right is granted to the prosecution, which violates the enforcement of principles of equality of arms and adversarial procedure.

The complainants pointed out, that in the situation where the defense party was fully limited in obtaining specific evidence without the "good will" of the prosecution, the verdict would be based solely on the evidence submitted by the prosecution. Therefore the verdict would fail to meet the standard stipulated in Article 40(3) of the Constitution without the reasoned criticism of the evidence from the procedural opponent and would fail to be based on irrefutable evidence. The complainants explained, that the disputed rules also restricted access of the defense party to the wide range of information, which thereby obstructed due use of right of defense with regard to the object regulated by the disputed provisions – data stored through computer.

The Constitutional Court first of all emphasized the necessity to provide the defense party with real and adequate opportunity to rebut the arguments of prosecution within the adversarial trial, which includes examination of the evidence submitted by the prosecution and right to argue about them, as well as right to obtain the evidence. The Court pointed out that according to the legislation of Georgia, the criminal trials follow the adversarial models. Therefore, the party should have possibility to influence the trial. Party should have reasonable opportunity to acquire and submit the evidence and protect its interests. Therefore the legislation should not put the other party at the disadvantageous position and should allow them to effectively realize their right of defense.

The Court referred to the rapid technological progress nowadays and to the growing trend of storage of any information (written documents, video and audio records, public or confidential information) in electronic archives in state institutions, by natural and legal persons. The Court determined that the disputed rule restricted access of the defense party to the wide range of information that was important to the criminal proceedings, without consideration of dangers for third parties and for constitutionally protected interests.

Reviewing the restrictive nature of the disputed provisions, the Constitutional Court explained, that the disputed normative content, which ruled out the possibility to apply to the court with the motion to issue ruling on subpoena for document or information stored in the computer system or on the device for storage of computer data, formed a legislative reality, where information stored through computer was available only for the prosecution in legal proceedings and enjoyment of right of defense by defense party at the trial depended on the good will of prosecution.

The Constitutional Court also indicated, that in the adversarial criminal procedure exclusion of access of a defense party to the specific type of evidence led to impossibility to

examine how irrefutable prosecution's arguments were through juxtaposing them with the counterarguments of the defense party. It led to the situation, when it was possible that the final verdict was based solely on the arguments of prosecution.

In view of all the above-mentioned, the Constitutional Court upheld constitutional complaints N650 and N699 and declared unconstitutional that normative content of the disputed provisions, which excluded the opportunity of the defense party to apply to the court with the motion to issue a ruling of subpoena of a document or information stored in the computer system or on the device for storage of computer data with regard to Article 40(3) and Paragraphs 1 and 3 of Article 42 of the Constitution.

„Citizen of Georgia Imeda Khakhutaishvili v. The Parliament of Georgia" (Constitutional Complaint N851)

On 11 July, 2017, the Constitutional Court of Georgia adopted the Judgement in the case of "Citizen of Georgia, Imeda Khakhutaishvili v. The Parliament of Georgia" (constitutional complaint N851).

The complainant challenged the possibility of sentencing to the additional punishment of deprivation of right of certain activities, when this punishment was not provided in the respective Article of the Private Part of the Criminal Code of Georgia with regard to the freedom of work enshrined by the Constitution.

The Constitutional Court explained, that the challenged regulation served the goal of individualization of punishment and was an effective means to achieve this goal. It could not be considered as manifestly unreasonable and disproportional punishment measure. The location of the disputed provision in the General Part of the Criminal Code was an issue of drafting technique. Therefore deprivation of convict of a right of certain activity by the court, even when this type of punishment is not provided in the Article of the Private Part of the Criminal Code constitutes the administration of justice, not implementation of legislative powers.

In view of all the above-mentioned, the Constitutional Court of Georgia did not uphold the constitutional complaint №851.

„Citizen of Georgia Zakaria Kipshidze v. The Parliament of Georgia" (Constitutional Complaint N781)

On 29 November, 2017, the Constitutional Court of Georgia adopted the Judgement in the case of "Citizen of Georgia Zakaria Kipshidze v. The Parliament of Georgia" (constitutional complaint N781)

The complainant alleged that the provision of the Law of Georgia on International Private Law violated the constitutional right to property, as it granted the competence to Georgian court, to use interim measures to secure the complaint in the dispute proceedings, which were conducted at the court of a different country, while the interim measures were enforceable in Georgia. The complainant pointed out that it was not the legal institution provided in the disputed rule in general, that was unconstitutional, but granting of the above-mentioned power to the court without establishment of due procedural guarantees for it.

The Constitutional Court rules, that the problem of the complainant was not linked to the disputed provision, which determined the jurisdiction of the common courts, but to the procedural rules, which determined, how the interim measures to secure a complaint should be undertaken. The subject of the disputed rule is not the procedure of adjudication on the interim measures to secure a complaint. In view of the above-mentioned, the Constitutional Court did not uphold the constitutional complaint №781.

„Citizens of Georgia – Roin Gavashelishvili and Valeriane Migineishvili v. The Government of Georgia" (Constitutional Complaints N629, N652)

On 25 October, 2017, the Constitutional Court adopted the Judgement in the case of "Citizens of Georgia – Roin Gavashelishvili and Valeriane Migineishvili v. The Government of Georgia" (constitutional complaints N629, N652)

The Constitutional Court upheld the constitutional complaint of Roin Gavashelishvili (registration N629) and declared unconstitutional that provision of the State Program of the Universal Health Care, approved by the Resolution №36 of the Government of Georgia of 21 February, 2013 on Certain Measures to Be Undertaken for Transition to the Universal Health Care, which restricted the right of a person, who was insured under the private insurance scheme as of 1 July, 2013, to fully benefit from the Universal Health Care Program. According to the interpretation of the Constitutional Court of Georgia, the disputed rule treated unequally people, who were full beneficiaries of the state universal health care program and people, who were not insured under the private insurance scheme any more, due to termination of labor contract. The Court considered, that the differential treatment was not

justified and therefore the disputed rule was unconstitutional with regard to right of equality enshrined in Article 14 of the Constitution.

„Citizen of Georgia, Giorgi Kartvelishvili v. The Parliament of Georgia“ (Constitutional Complaint N703)

On 13 October, 2017, the Constitutional Court upheld the constitutional complaint (registration №703) of the citizen of Georgia, Giorgi Kartvelishvili v. the Parliament of Georgia.

The complainant challenged the constitutionality of sentencing to imprisonment from 8 to 10 years for repeated failure to obey the lawful order of employee of penitentiary establishment with regard to Article 17(2) (right to human dignity) of the Constitution of Georgia. In view of the complainant, the disputed rule imposed inadequately high liability and violated the right to human dignity protected by the Constitution of Georgia.

The Constitutional Court of Georgia shared the arguments of the complainant and in view of the dangers entailed by the criminal act, decided that the challenged sentence was disproportional. Therefore the normative content disputed by the complainant was declared unconstitutional with regard to Article 17(2) of the Constitution of Georgia.

„Citizen of Georgia, Shota Jibladze v. The Parliament of Georgia “ (Constitutional Complaint N666)

On 22 June, 2017, the Constitutional Court of Georgia did not uphold the constitutional complaint (registration N666) of the citizen of Georgia, Shota Jibladze v. the Parliament of Georgia.

The complainant challenged the obligation to pay compensation to the State for changing the purpose of use of the land by natural and legal persons, who were owners of agricultural lands which appeared within the administrative boundaries of the city, Batumi.

The Constitutional Court ascertained, that presence of agricultural land within the municipal boundaries of a city was a factor restraining expansion of urban territories of cities and reduced the risk of harmful influence on environment within the specific territory. Therefore, presence of agricultural zone within the municipal boundaries of big cities, together with their use according to their function - for agricultural purposes, and control of urban

development, also ensured that people lived in a healthy environment, biodiversity was maintained and anthropogenic influence on the environment was controlled. Moreover, agricultural land was a scarce resource, and its use for construction purposes les to reduction of this resource. Therefore, the Constitutional Court ruled, that for changing the purpose of agricultural land by the legislator, to strike a fair balance between the above-listed public interests and free disposal of property by the owner the disputed provision constituted a proportional means for achieving the goal and did not violate constitutional right of property. In view of this, constitutional complaint was not upheld.

„Citizen of Georgia Khatuna Pkhaladze v. The Parliament of Georgia“ (Constitutional Complaint N826)

On 21 April, 2017, the Constitutional Court of Georgia did not uphold the constitutional complaint (registration N826) of the citizen of Georgia, Khatuna Pkhaladze. The complainant considered unconstitutional that rule of the Law of Georgia on Tobacco Control, which prohibited sale of tobacco products at the trading points, which were located on the adjacent territories, within 50 meters of radius from institutions of general education/ schools. The complainant asserted that the rule contradicted the right to free entrepreneurship under Article 30(2) of the Constitution of Georgia.

The Constitutional Court declared, that within the present dispute, the state should be granted wide discretion in view of the sphere of regulation of the disputed rule and specificity of the group of people, to be protected by it. The Court explained, that consumption of tobacco products has negative effect on human health. Moreover, the beneficiaries of services of institutions of general education/schools are minors. There is a heightened interest of restriction of access to tobacco products and their popularization among minors.

The Court stated, that the area within 50 meters radius from the general educational institutions/schools is a space, where large number of minors regularly gathers/moves. Presence of any trading point of tobacco products within this radius will gain it even heightened visibility for minors. In view of this, the Constitutional Court decided, that the disputed rule served a valuable legitimate aim and constituted a proportional means to achieve it. Therefore, the constitutional complaint was not upheld.

The dissenting opinion of the Judges of the Constitutional Court – Maia Kopaleishvili and Giorgi Kverenchkhiladze is appended to the Judgement.

„Citizen of Georgia, Giorgi Kraveishvili v. The Parliament of Georgia " (Constitutional Complaint N757)

The Constitutional Court of Georgia upheld the constitutional complaint №757 of the citizen of Georgia, Giorgi Kraveishvili v. the Government of Georgia and declared unconstitutional the confidentiality of identity of independent experts, who evaluate the projects submitted in the competition for state scientific grants for fundamental studies with regard to freedom of information enshrined in Article 41(1) of the Constitution.

The Constitutional Court interpreted that the information about the identity of experts is related to the issue of their participation in the process of execution of public powers. More specifically, expert participates in the decision-making of the scientific foundation and their assessments foster the foundation to solve the problem of issuing of grants. Thus the identity of an independent expert constitutes public information available in the state institution, whereas non-disclosure of identity of experts presents restriction of access to information available in public records.

The Constitutional Court pointed out in the Judgement, that the disputed regulation was set forth not in law, but in a subordinate normative legal act – Resolution №84 of the Government and the Parliament did not delegate the power to the Government according to the procedure prescribed by the law to regulate this issue. Thus, as the disputed rule did not meet the formal criterion on necessity of restriction of a right by law, it was declared unconstitutional with regard to Article 41(1) of the Constitution, which protects the right to access to information available in official records of the state.

„Citizen of Georgia, Levan Alapishvili v. The Parliament of Georgia" (Constitutional Complaint N638)

On 14 February, 2017 the Constitutional Court of Georgia adopted the Judgement and upheld the constitutional complaint (registration number №638) of the citizen of Georgia, Levan Alapishvili.

The Constitutional Court found the regulation provided in the Administrative Procedure Code of Georgia contradicted the right to fair trial (Article 42(1) of the Constitution) and right of defense (Article 42(3) of the Constitution). Under the disputed regulation, in the process of consideration of motion of the tax authority on reception of the confidential information on the basis of international treaty, the judge has no opportunity to study the individual circumstances and decide on whether the persons, whose confidential information is sought by the tax authority should participate in consideration of the motion. Moreover, that normative content of the disputed rule was also found unconstitutional, which did not provide for obligation of notification of a person about the proceedings, in case s/he was excluded from the proceedings, after the risks associated with notification were eliminated.

The Constitutional Court also reviewed the rule of appeal against the decision on the above-mentioned motion and upheld the claim of the complainant in this part, as well. More specifically that normative content of the disputed provision was found unconstitutional, which excluded the possibility of a person, whose confidential information was sought by the tax authority based on the international agreement of Georgia, to file an appeal for reversal of the order of the judge.

iii. Judgements of the Second Chamber

„JSC „Telenet“ v. The Parliament of Georgia” (Constitutional Complaint N667)

On 28 December, 2017, the Second Chamber of the Constitutional Court of Georgia adopted the Judgement in the case of “JSC “Telenet” v. The Parliament of Georgia” (constitutional complaint N667).

The subject of dispute in this case was the constitutionality of Article 202(4) of the Tax Code of Georgia with regard to Article 14, Paragraphs 1 and 2 of Article 21 and Article 30(2) of the Constitution of Georgia.

The complainant requested declaration of unconstitutionality of a provision of the Tax Code of Georgia, which granted the tax authority discretion to determine the tax obligation of the payer of the property tax based on the market price of the taxable property. The complainant asserted, that the power of the tax authority provided in the disputed rule made the tax burden unforeseeable, as the legislator provided for two different rules of calculation of the tax without stipulating any criteria or preconditions. In view of this, the complainant asserted, that the disputed regulation was discriminatory; it interfered with the right of

property and hindered freedom of entrepreneurship and presence of competition in the market.

The respondent party asserted, that the disputed rule did not impose unexpected tax burden on the taxpayer and it was within the state power to establish framework for legal relations of taxation. Moreover, this rule served determination of the tax burden by the real price and did not differentiate among the taxpayers, as it applied equally to its addressees after undertaking the tax audite. In view of this the respondent declared, that the disputed rule raised no issue of constitutionality.

The Constitutional Court reiterated that in the sphere of tax policy, the state has a wide margin of appreciation. At the same time, scope and acceptable limits of this policy is determined by the right of property set forth in the Constitution of Georgia. Reasoning with regard to Article 21 of the Constitution of Georgia, the Court interpreted the relation between the book value and market value of the property and stated, that the system provided in the disputed rule aims at determination of the real price of the property and does not impose unreasonably inadequate tax burden. Moreover, as the taxpayer has a choice to employ revaluation method and avoid calculation of the taxable value of the property based on its market value, the regulation should be considered as the least restrictive and it meets the requirements of the right to property.

Reviewing the constitutionality of the disputed rule with regard to Article 14 of the Constitution of Georgia, the Constitutional Court pointed out that determination of the property tax based on its market price is part of the discretionary power of the tax authority. After conducting the tax audit, it is possible that the tax authority will use the differentiation provided in the disputed rule and will determine the property tax based on the market price for some taxpayers, while it will leave the tax obligation calculated on the basis of the book value unchanged for other taxpayers. Therefore the disputed rule allows for differential treatment of taxpayers. At the same time, the Court ruled, that in a given case, the differential treatment had no reasonable justification. Therefore it violated the right to equality before the law as protected under Article 14 of the Constitution of Georgia.

Reasoning with regard to Article 30 of the Constitution of Georgia, the Court emphasized that the arguments brought by the complainant addressed only differential treatment and restriction of property prescribed by the disputed rule. As no circumstances were identified, that would restrict freedom of entrepreneurship and freedom of competition, the Court did not uphold th complaint in this part.

„Citizen of Georgia, Omar Jorbenadze v. The Parliament of Georgia " (Constitutional Complaint N658)

On 16 November, 2017, the Constitutional Court of Georgia adopted the Judgement in the case of "Citizen of Georgia, Omar Jorbenadze v. The Parliament of Georgia" (constitutional complaint №658).

Bringing the constitutional complaint, the complainant requested declaration of unconstitutionality of the Law of Georgia on Disciplinary Liability of Judges of the Common Courts of Georgia and Disciplinary Proceedings with regard to Article 29 of the Constitution of Georgia.

The complainant pointed out, that under Article 86(2) of the Constitution of Georgia, the Constitution and organic law should regulate dismissal of a judge from the occupied position. The disciplinary liability of a judge may lead to their dismissal from the occupied position, whereas the issues related to disciplinary liability are regulated by the ordinary law; in view of its legal form, this regulation does not meet the formal requirements of the Constitution.

The respondent asserted that the disputed Law regulates procedural issues of imposition of disciplinary liability on judges. However, grounds and rules for dismissal of a judge from the occupied position is set forth in the Organic Law of Georgia on Common Courts. Therefore, the formal requirements of the Constitution of Georgia are met.

The Constitutional Court interpreted, that the conditions of taking and holding of the office of judge should be in compliance with the requirements of Article 29 of the Constitution. This entails obligation of the State to not only adhere to the principle of proportionality in restriction of the right to hold a public office, but also to adhere to all the formal requirements as they are stipulated in the Constitution.

Based on the systemic analysis of the Constitution, the Court ascertained, that the rule of dismissal of a judge from the occupied position prescribed in Article 86(2) of the Constitution of Georgia involves all those procedural rules together, which are applied in the process of the named decision-making. The above-mentioned constitutional provision provides a formal requirement, that such procedural issues be regulated under the organic law.

Based on the analysis of relevant rules of the disputed legal act, the Court ascertained, that the disciplinary proceedings might end up in any outcome, including the dismissal of a judge from the occupied position. Therefore, any procedure set forth in the disputed Law, which is related to disciplinary proceedings, presents a procedure stipulated for dismissal of a judge from the occupied position and their regulation in the form of an ordinary law contradicts the formal requirement established by the Constitution of Georgia.

In view of all the above-mentioned, the Constitutional Court declared unconstitutional the Chapters II, III and V of the disputed Law, which prescribe procedures of disciplinary proceedings. The Court decided, that these rules did not comply with Article 29 of the Constitution from the formal perspective.

The Constitutional Court took into account, that in case of invalidation of the disputed provisions upon publication of the Judgement of the Constitutional Court it would be impossible to carry out disciplinary proceedings against judges, which the complainant did not applied for and was not the goal of declaration of unconstitutionality of the disputed provisions by the Constitutional Court either. Therefore, the Constitutional Court decided, that the legislator should be given a reasonable time, so that it could regulate the procedure for dismissal of a judge according to the requirements of the Constitution. In view of this, the disputed provisions were invalidated from 1 May, 2018.

„Citizens of Georgia – Meri Giorgadze and Pikria Merabishvili v. The Parliament of Georgia " (Constitutional Complaint N735)

On 21 July, 2017, the Second Chamber of the Constitutional Court of Georgia adopted the Judgement in the case of "Citizens of Georgia – Meri Giorgadze and Pikria Merabishvili v. The Parliament of Georgia" (constitutional complaint N735)

The subject of dispute in this case was the constitutionality of the 2nd and 3rd sentences of Article 127(6) of the Law of Georgia of 31 October, 1997 on Public Service with regard to Article 42(9) of the Constitution of Georgia.

The disputed regulation deprived the servant, who was unlawfully dismissed from public service the opportunity to receive compensation for lost salaries under the rule prescribed in Article 112 of this Law, in case the establishment would not reinstate them to their job. The complainant party indicated, that the restriction set forth in the disputed provision contradicted the right to compensation of damages inflicted by unlawful action of the State, Autonomous Republics and local self-government authorities and officials enshrined in Article 42(9) of the Constitution of Georgia.

The complainants explained, that the damages, including the issue of compensation for the lost salaries should not be linked to the fact of reinstatement of a servant to the job, as despite of the fact whether they will be reinstated or not, the damages inflicted by the unlawful legal act issued by the administrative body is already present and therefore, the obligation of its compensation is already triggered. Moreover, there might be cases, when to solve the issue

court may order examinations and evaluations, as a result of which it is ascertained that the servants were dismissed unlawfully and that they should be reinstated to their job, however it is impossible due to the objective reasons. In this case, a concerned person loses the opportunity to receive compensation altogether.

The respondent asserted, that postponement of right to receive compensation under the disputed rule is justified, as in-depth examination of the details may confirm that in fact, a person does not meet the requirements of law and was dismissed based on the proper substantive grounds; therefore, they do not deserve the compensation.

The Constitutional Court interpreted, that the right to compensation of the damages inflicted by the autonomous republics and local government authorities and officials is related to the number of premises, which should be present simultaneously: 1. There must be a fact of infliction of damages by an action of a person acting on behalf of the State, Autonomous Republics' and local self-government authorities; 2. Unlawful nature of actions of the mentioned persons should be established under the due procedure; 3. The damages inflicted to a person should be caused by unlawful actions of the actors mentioned in Article 42(9) of the Constitution and there should be a causal link between the unlawful action and inflicted damages.

The Constitutional Court indicated, that the disputed rule regulates a case, when it is ascertained by the court decision, that a individual administrative-legal act (hereinafter "individual act") issued for dismissal of a person is unlawful, as it was adopted without examination and evaluation of circumstances important for the case. Therefore there is an unlawful act present, which is committed by an actor listed by Article 42(9). Moreover, the unlawfulness of an act adopted for dismissal of a person from the occupied position is confirmed by the court decision. Thus, the unlawful act of above-mentioned actors is established through the due procedure.

As to the fact of damages, the Court relied on its previous case law and declared, that at the moment of appointment in public service, a public servant has reasonable expectation, that they have guarantee to receive salary, unless they are dismissed lawfully, on the ground prescribed by law. Therefore, the remuneration, that the servant is unable to receive due to the unlawful dismissal from work, constitutes damages for the purposes of Article 42(9) of the Constitution. The disputed provision rules out the compensation for the lost salaries of a servant, unless they are reinstated to the job. In view of this, the presence of damages is also confirmed.

With regard to the causal link between the unlawful act and inflicted damages, the Court noted, that in cases encompassed in the disputed provision, the Court revokes an individual act without solution of the disputed issue, that is, whether there was a legal ground for dismissal of a persons is not ascertained. Therefore at this stage of the case, without carrying out the additional examination, it is impossible to ascertain, whether there is a causal link between the inflicted damages and actions of the respective actor. In those cases, where the administrative authority (establishment) will conclude based on the thorough examination of the circumstances of the case, that there was a legal ground for dismissal of a person and that person should not be reinstated to the work, the damages inflicted to the servant is not caused by the reason of administrative authority, as that person would be dismissed from the work, even if all the relevant circumstances of the case were examined.

Moreover, it is stated in the judgement, that when the *de novo*, thorough examination of the case leads to finding, that the servant was dismissed without the substantive legal grounds for it, though reinstatement to the work is impossible due to the objective reasons (for example the position and/or structural unit, where this person worked, does not exist anymore) in such case, there is a causal link between the illegal act of the establishment and the inflicted damages - the lost salaries.

In view of the above-mentioned, the Constitutional Court declared the disputed regulation unconstitutional and ruled, that when the thorough examination of the case by the establishment reveals, that there is no lawful ground of dismissal of a person, in such case there are all the preconditions of compensation of damages under Article 42(9) of the Constitution of Georgia and the full amount of lost salaries should be reimbursed regardless of reinstatement of the servant to the job.

„Citizen of Georgia, Nugzar Kandelaki v. The Parliament of Georgia“ (Constitutional Complaint N598)

On 21 July, 2017 the Constitutional Court of Georgia adopted the Judgement in the case of “Citizen of Georgia, Nugzar Kandelaki v. The Parliament of Georgia” (registration no. 598).

The complainant challenged Article 35(6) of the Law of Georgia on Lawyers, according to which the decision of the Ethics Commission of the LEPL Georgian Bar Association on imposition of the disciplinary penalty can be appealed only before the Supreme Court of Georgia. The complainant pointed out that the Supreme Court of Georgia is a cassation court, which excludes the possibility that this institution will consider and decide the case as a first

instance court. The complainant argued, that the Law does not provide the procedure for appeal against the decision of the Ethics Commission and consideration of an appeal. Moreover, taking the decision by the Supreme Court, as a first intance court rules out the possibility to appeal against it.

In view of all the abovementioned, the complainant alleged, that the disputed provision contradicted the right to fair trial protected under Paragraphs 1 and 2 of Article 4 of the Constitution of the Georgia.

According to the respondent, the Parliament, it was true that implicitly the Constitution of Georgia grants the Supreme Court mandate to function as a cassation court, however, this does not exclude fulfillment of other powers by this institution. As to the procedures of proceedings, the respondent explained, that there was a unequivocal case law established by the Supreme Court of Georgia with regard to the consideration of the decisions of Ethics Commission, due to which the complainant should not encounter the problems of foreseeability. As to the claim related to appeal, the representative of the Parliament of Georgia stated, that the disputed rule ensures adjudication of the case by the court of highest instance, which guarantees even higher standard of protection of a person, on theone hand and ensures even better the highly competent adjudication of the case.

The Constitutional Court of Georgia noted, that under the Constitution, the Supreme Court of Georgia is empowered to decide a case, which is not related to fulfillment of the cassation function, provided it will not impede fulfillment of the competence directly granted by the Constitution, that is cassation function in other cases. Moreover, despite the fact, that the legislation does not provide for the rule of appeal against the decision of the Lawyers' Ethics Commission and procedure for consideration of the case, there is an uniform case law of reviewing legality of decisions of the Lawyers' Ethics Commission by the Supreme Court of Georgia since 2008. More specifically, the Supreme Court of Georgia employs analogy of law for reviewing the decisions of the Lawyers Ethics Commission and applies the procedure provided in the Law of Georgia on Disciplinary Liability of Judges of Common Courts and Disciplinary Proceedings, constitutionality of which was not questioned by the complainant.

The Constitutional Court of Georgia also did not share the arguments of the complainant, alleging that he had his possibility to use the right of appeal restricted. The Constitutional Court of Georgia explained, that in a given case, consideration of the case of disciplinary transgression and adoption of the respective decision falls upon the Lawyers Ethics Commission, whereas the disputed rule entitles the complainant, to challenge the decision made by the latter institution, before the Supreme Court of Georgia. Thus he is not deprived of an opportunity to appear before the objective Court, present his arguments and be granted a reasoned judgement. The Constitutional Court of Georgia emphasized that fact, that in certain cases, in view of the legal nature of the case, it might be necessary that for the full realization of ones right to fair trial a person be granted an opportunity to challenge before

more than one judicial instance the measure adopted against them, that restricts their rights. However, in the present case, the Constitutional Court of Georgia did not see such a necessity.

In view of all the above-mentioned, the Constitutional Court of Georgia decided that the disputed rule did not contradict Article 42, Paragraphs 1 and 2 of the Constitution of Georgia.

„LLC „Georgian Manganese“ v. The Parliament of Georgia “ (Constitutional Complaint N745)

On 28 December, 2017, the Second Chamber of the Constitutional Court of Georgia did not uphold the constitutional complaint (registration no. 745) of the LLC “Georgian Manganese” v. The Parliament of Georgia.

The disputed rule provided the obligation of purchase of the guaranteed power and payment of its price for various subjects, including the direct consumers of the electricity. The complainant pointed out, that the payment of the price of guaranteed power is a heavy burden to bear and the mentioned price should not be paid in proportion to the consumed electricity.

The Constitutional Court indicated, that the price of the maintenance of the guaranteed power, as the necessary cost for well-functioning electricity system is the part of the price of the consumed electricity. Some electricity consumers pay the above price as part of the electricity tariff, while others pay it separately. Thus the Court did not find it unreasonable to pay the above price proportionally to the consumed electricity. The Court also indicated that in case any of the electricity consumers does not pay the above price, it would be necessary to divide their share of payment among other consumers, which would unfairly increase their obligation.

„Non-Commercial Entity „Prema“ v. The Parliament of Georgia“ (Constitutional Complaint N734)

On 28 December, 2017 the Second Chamber of the Constitutional Court of Georgia upheld the constitutional complaint (registration no. 734) of the non-commercial entity “Prema” v. the Parliament of Georgia. The complainant challenged the rule, which allowed a court to issue decision on validation of seizure imposed by the tax authority without an oral hearing of the case.

The Constitutional Court explained, that adoption of a decision on the above-mentioned issue requires from the judge to examine and assess the factual circumstances related to

imposition of seizure, due to which there is a heightened interest on the part of a person for the oral hearing to be held. The Constitutional Court considered the disputed provision to be a disproportional means of restriction of the right to fair trial and declared it unconstitutional.

The complainant also requested declaration of unconstitutionality of the rule, which vested the power in the tax authority, to impose the tax pledge/mortgage on the whole property of taxpayer at the beginning of the urgent, field tax audit. The Court indicated, that the disputed rule allowed to impose the tax pledge/mortgage on greater part of property, than it is necessary to secure the performance of the tax notice. Therefore the Court considered the disputed provision to be a disproportional restriction of right to property and declared it unconstitutional.

„LLC "Georgian Manganese" v. The Parliament of Georgia" (Constitutional Complaint N746)

On 1 December, 2017, the Second Chamber of the Constitutional Court of Georgia adopted the Judgement in the case of "LLC "Georgian Manganese" v. The Parliament of Georgia" (constitutional complaint №746) and partially upheld the claim raised in the complaint.

According to the rule challenged in the constitutional complaint N746, while using the provisional measures the Court may impose the party, who applied for provisional measures, obligation to secure the possible damages, that other party may incur. The litigation party has 7 days to provide security for possible damages. The complainant asserted, that this term was unreasonably short, as it is often the case that security for possible damages involves mobilization of large sums, which objectively requires more than 7 days.

The Constitutional Court shared the arguments of the complainant and considered that in certain cases, it may objectively need more than 7 days to collect the money necessary to secure the possible damages. In view of this the disputed provision was found unconstitutional with regard to Article 42(1) (right to fair trial) of the Constitution of Georgia.

„JSC "Silk Road Bank" v. The Parliament of Georgia" (Constitutional Complaint N656)

On 21 July, 2017, the Constitutional Court did not uphold the constitutional complaint (registration №656) of the JSC "Silk Road Bank" v. the Parliament of Georgia.

The complainant challenged the rule, which determines the six-month statute of limitations for giving the notice to the heirs of a person by his or her creditors, in case of his or her decease. This term starts running from the moment the creditor learns about the opening of estate (person's death). The complainant indicated, that the creditor may know about the fact of opening of the estate, but may not be informed about the identity of the heir, to who the notice must be submitted. Therefore the creditor may not be able to submit the notice within the time prescribed by law and lose the right to demand performance.

The Constitutional Court took into account the interpretation of the Supreme Court of Georgia with regard to the disputed provision and ruled, that the 6-month limitation period applies only in case, if the creditor learns within this period the identity of the heir, to who notice should be given. Otherwise, reasonable time for giving the notice applies. In view of the above-mentioned, the Constitutional Court decided that the disputed rule does not contradict Article 21 of the Constitution of Georgia.

„LLC "UCG Green Power" v. The Parliament of Georgia" (Constitutional Complaint N680)

On 21 July, 2017, the Constitutional Court of Georgia did not uphold the constitutional complaint (registration N680) of "LLC UCG Green Power" v. the Parliament of Georgia.

The complainant challenged the provision of the Criminal Procedure Code of Georgia, according to which, in case of seizure of the property in the criminal procedure, use of property may also be prohibited, if necessary.

The Constitutional Court pointed out, that the goals of application of seizure will not be accomplished/fulfilled in certain cases without prohibition on use of property. The need for prohibition of use may be generated by various circumstances, including the role of the seized property and its function in the process of preparation/commission of the crime. The Court declared, that when prohibition of use of property is necessary for prevention of serious crime, this type of restriction of the right to property does not contradict the strictures of the Constitution.

IV. Termination of Proceedings

According to Article 13(2) of the Law of Georgia on Constitutional Proceedings, „[c]omplainant may reduce the scope of the claim, withdraw the claim. Withdrawal of the claim, as well repeal or invalidation of a disputed act at the time of consideration of the case shall result in termination of the proceedings in the Constitutional Court, except for cases provided in Paragraph 6 of this Article." According to Article 13(6) of the Law of Georgia on Constitutional Proceedings, "After admitting the case by the Constitutional Court for consideration on merits, in case of repeal or invalidation of a disputed legal act, if the case concerns human rights and freedoms recognized in the Chapter II of the Constitution, the Constitutional Court is authorized to continue proceedings and decide on compliance of the repealed or invalidated disputed legal act with the Constitution, if decision of this case is of particular importance to secure the constitutional rights and freedoms."

Thus these are the cases, when the proceedings are terminated at the Constitutional Court: a. the complainant reduces the scope, withdraws the claim; b. the disputed legal act was cancelled or invalidated at the moment of consideration of the case; c. according to the case law of the Constitutional Court of Georgia, the death of complainant will also result in termination of proceedings.

i. Termination of Proceedings on the Ground of Withdrawal of the Claim

The complainant is allowed to withdraw their claim at any stage of consideration of the case, which will automatically lead to termination of proceedings in the Constitutional Court. Only the common court and/or the High Council of Justice are not entitled to withdraw from the consideration of constitutional referral and request the termination of proceedings in the Constitutional Court.[32]

In certain cases, withdrawal of the claim by the complainant is related to adoption of the amendments to the legislation. In other words, the authority, which issued the disputed legal act understands the problem with the act and amends it, thus solving the problem of a complainant.

This year the proceedings were terminated on 4 constitutional complaints due the withdrawal of their claim by complainants. More specifically, the Constitutional Court terminated proceedings on the constitutional complaints N604, N695, N850 and N852.

[32] Law of Georgia on Constitutional Proceedings, Article 13(4) of the Constitution.

ii. Termination of Proceedings on the Ground of Repeal or Invalidation of the Disputed Legal Act

Amendment of a disputed legal act, in contrast to withdrawal of the claim, does not automatically result in termination of proceedings in the Constitutional Court. It depends on which stage the consideration of the case has reached, on the one hand and on the importance of the case for securing constitutional rights and freedoms, on the other hand. More specifically, in case the constitutional complaint is not admitted for consideration on merits, repeal or invalidation of a disputed legal act will automatically lead to termination of proceedings in the Constitutional Court. If the disputed act is amended after the admission of a case for consideration on merits, but before it is finalized, the proceedings will continue only in case, if deciding the case is particularly important to secure the constitutional rights and freedoms. Once the consideration on merits is finalized, the invalidation of the disputed legal act does not present the ground for termination of proceedings.

It is noteworthy, that the constitutionality of the words of Article 13(2) of the Law of Georgia on Constitutional Proceedings, "repeal or invalidation of a disputed legal act at the time of consideration of the case shall result in termination of the proceedings in the Constitutional Court" was challenged in the constitutional complaint N635 with regard to Article 42(1) of the Constitution of Georgia. Under the Recording Notice №3/7/635 of the Constitutional Court of Georgia of 25 November, 2015 in the case of "LLC "Publishing House Intelligence", LLC "Publishing House Artanuji", LLC "Logos Press" and Citizen of Georgia, Irina Rukhadze v. The Parliament of Georgia", the respective constitutional complaint was admitted for consideration on merits. Hence, the Constitutional Court will consider the constitutionality of termination of proceedings on the ground of amendment of the disputed legal act within adjudication of this case.

In 2017, as a result of amendments to the disputed acts the proceedings were terminated with regard to several constitutional referrals and constitutional complaints prior to their admission for consideration on merits.

More specifically the proceedings were terminated under the Ruling №3/3/774,778,796,797,799,800,802,804,806,807,816,818,819,856,865,869 of 17 May, 2017 with regard to the constitutional referrals №774, №778, №796, №797, №799, №800, №802, №804, №806, №807, №816, №818, №819, №856, №865 and №869, as the disputed provision was invalidated prior to admission of the case for consideration on merits. The subject of the

dispute of these constitutional referrals was that normative content of Article 260(1) of the Criminal Code, which allowed for application of imprisonment as a criminal punishment for purchase and storage for personal consumption purposes of the narcotic drug - raw marijuana, which is determined in the 92nd horizontal raw of the Appendix №2 of the Law of Georgia on Narcotic Drugs, Psychotropic Substances, Precursors and Narcological Assistance. The Constitutional Court interpreted, that the disputed normative content had already been invalidated by the Ruling №3/1/855 of the Constitutional Court of 15 February, 2017. The rule invalidated under the Ruling №3/1/855 and the rule challenged in the constitutional referrals №774, №778, №796, №797, №799, №800, №802, №804, №806, №807, №816, №818, №819, №856, №865 and №869 were identical, due to which the proceedings were terminated on them.[33]

Due to the amendments to the Criminal Code of Georgia, the proceedings were also terminated on the constitutional referrals N772, N773, N784, N785, N789, N805, N866. Several amendments were made to the Criminal Code of Georgia through adoption of the Law of Georgia N1221-რს of 26 July, 2017 on Amendments to the Criminal Code of Georgia; namely, Section 6 was added to the note of Article 260, according to which, Article 260 (except for Sections 1 and 2 of the note), does not apply to cannabis (plant) and marijuana - the narcotic drugs, determined in rows 73 and 92 of the list of "Narcotic Drugs" provided in the table of Appendix №2 of the Law of Georgia on Narcotic Drugs, Psychotropic Subtsances, Precursors and Narcological Assistance. Moreover, Article 273[1] was added to the Criminal Code, which establishes criminal liability for illegal purchase, storage, transportation, transfer, distribution and/or consumption without a doctor's prescription of cannabis plant or marijuana and provides for the respective punishment. The amendments made through adoption of the Law of Georgia N1221-რს of 26 July, 2017 on Amendments to the Criminal Code of Georgia also touched Article 273 of the Criminal Code and changed its text. As the amendments of the disputed provisions took place prior to decision of the issue of admissibility of constitutional referrals for consideration on merits, the constitutional proceedings were terminated on constitutional referrals N772, N773, N784, N785, N789, N805, N866.

[33] The Ruling №3/3/774,778,796,797,799,800,802,804,806,807,816,818,819,856,865,869 of the Constitutional Court of Georgia of 17 May, 2017 in the case of "Constitutional Referrals of the Supreme Court on the Constitutionality of the Normative Content of Article 260(1) of the Criminal Code of Georgia, Which Allows Application of Imprisonment, as Criminal Punishment for Purchase and Storage of Narcotic Drug – "Raw Marijunana" for Personal Consumption Purposes".

This year, due to amendment of the disputed legal act prior to admission of the case for consideration on merits, the proceedings were also automatically terminated in the part of respective claims on the constitutional complaints N628, N694, N749, N753, N861 და N880.

On the ground of adoption of the legislative amendments after admission of the case for consideration on merits the proceedings were terminated on one constitutional complaint by the Constitutional Court of Georgia in 2017. More specifically, under the Ruling №1/2/864 of 12 October, 2017, the proceedings were terminated on the constitutional complaint of the citizen of Georgia, S.G. The legislative amendments changed the content of the rules challenged by the complainant. In spite of this, the new normative reality repeated to certain extent the content of the disputed rules and still involved some of the risks, identified by the complainant.

However, the complainant has submitted another constitutional complaint (registration №1257) to the Constitutional Court of Georgia. According to the interpretation of the Constitutional Court, the constitutional complaint №1257 challenges the constitutionality of the effective text of Article 10(1) of the Law of Georgia on Elimination of Violence Against Women and/or in the Family, Protection and Assistance for Victims of Violence with regard to Paragraphs 1 and 2 of Article 17 of the Constitution of Georgia. The complainant raises the same legal issue in the constitutional complaint №1257 – constitutionality of discretionary power of policemen with regard to issuing the restraining order. Thus the problem identified by the complainant can be considered during the review of constitutionality of the rule in force and there is not need to decide upon constitutionality of the invalidated rule. Therefore the proceedings were terminated on the constitutional complaint N864.[34]

iii. Termination of Proceedings due to Death of the Complainant

According to the well-established case law of the Constitutional Court of Georgia, in view of Article 39 of the Organic Law on the Constitutional Court of Georgia, there is no claim without a specific person. Therefore, death of the complainant deprives basis of the adjudication of their complaint, which leads to termination of constitutional proceedings in the case.[35]

---

[34] Ruling №1/2/864 of the Constitutional Court of Georgia of 12 October, 2017 in the case of "Citizen of Georgia, S.G. v. The Parliament of Georgia".

[35] See Ruling N1/1/437 of the Constitutional Court of Georgia of 10 June, 2009 in the case of "Citizen of Georgia, Kakhaber Khundadze v. The Parliament of Georgia"; Judgement N1/3/534 of the Constitutional Court of Georgia

This year, the Ruling №1/1/657 of 2 June, 2017 established an important standard with regard to the termination of proceedings due to death of the complainant.

According to the interpretation provided by the Constitutional Court, in view of the essence of the disputed legal relation and specificity of the claim of the complainant, their death may in certain cases not leave the claim devoid of meaning and may not be considered as ground of termination of the case, when continuing the proceedings serves directly the rights of deceased person and establishment of constitutional legal standards for their protection. In such cases, the Court may not terminate the proceedings, if in view of the specificity of the legal relation, termination of the case would conflict with the objectives of the constitutional dispute. As in the given case, no such exceptional circumstances were identified, the proceedings were terminated on the constitutional complaint N657.[36]

of 11 June, 2013 in the case of "Citizen of Georgia, Tristan Mamagulashvili v. The Parliament of Georgia"; Ruling N2/5/584 of the Constitutional Court of Georgia of 24 July, 2014 in the case of "Citizen of Georgia, Zaal Gvelesiani v. The Minister of Justice of Georgia".

[36] The Ruling №1/1/657 of the Constitutional Court of Georgia in the case of „Citizen of Georgia, Giorgi Putkaradze v. The Parliament of Georgia".

2. International Relations and Other Activities

In 2017, the Constitutional Court carried out intensive work at the international stage and organized the whole range of events.

i. The Conference of European Constitutional Courts

In May, 2014, the Constitutional Court of Georgia was elected as chair of the Conference of the European Constitutional Courts (CECC) for 3 years. Due to this decision, the Constitutional Court of Georgia hosted all the high-level events planned in the framework of the Conference of the European Constitutional Courts in the years 2014-2017, in Batumi.

From 29 June to 1 July, 2017, the Constitutional Court of Georgia hosted the XVII Congress of the Conference of European Constitutional Courts. The delegates from the Constitutional Courts and other similar European institutions from over 40 countries attended the Congress. In addition to the foreign guests, the President of Georgia, the Chairman of the Parliament of Georgia, the Chairperson of the Supreme Court of Georgia, the Prime-Minister of Georgia and representatives of the legislative, judicial and executive branches and diplomatic corps were among the invited guests.

The opening speeches at the Congress were given by the President of the Venice Commission, Gianni Buquicchio and heads of the regional and linguistic groups of World Conference on Constitutional Justice. The General Rapporteur of the XVII Congress was the Vice-President of the Constitutional Court of Georgia, Lali Papiashvili, who presented the main report on the topic of the Congress – "Role of Constitutional Courts in Upholding and Applying the Constitutional Principles".

The XVII Congress ended with the concluding session on 30 June. The same day, meeting of the Circle of Presidents of the Conference of European Constitutional Courts was held, where it was decided through voting, that the XVIII Congress will be hosted by the Constitutional Court of Czech Republic in 2017-2010, and the Constitutional Court of Moldova will take over the presidency of the XIX Congress in 2020-2023.

It should be noted, that the fact of election of Georgia as the host of the Congress and holding the Congress in Georgia shows the recognition of progress made by Georgia in the sphere of constitutional justice; it is also an important premise of establishment of the European standards of justice and strengthening of democratic governance in our country.

ii. The World Conference of Constitutional Justice

On 11-14 October, 2017, the delegation from the Constitutional Court of Georgia led by Zaza Tavadze took part in the IV Congress of the World Conference of Constitutional Justice (WCCJ), which was hosted by the Constitutional Court of Lithuania in Vilnius. The main topic of the Congress was "Rule of Law and Constitutional Justice in Modern World". The congress was officially opened by the President of Lithuania, Dalia Grybauskaitė, the President of the Venice Commission of the Council of Europe, Gianni Buquicchio and the Vice-President of the European Court of Human Rights, Linos-Alexander Sicilianos. Attending the Congress, the delegation of the Constitutional Court of Georgia held bilateral meetings with the chairpersons and members of the European Constitutional Courts.

The World Congress of Constitutional Justice, unites, together with the Constitutional Court of Georgia, the Constitutional Courts and relevant institutions of 110 countries from Europe, South and North America, Asia and Africa.

With the support of the Venice Commission of the Council of Europe, the World Conference functions as permanent body, the goal of which is to foster development of constitutional justice and human rights and deeper dialogue among the judges of constitutional courts.

iii. Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions

On 2-14 February, 2017, as part of the presidency of the Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions, the Constitutional Court of Ukraine held the preparatory meeting of the Congress of this Association, which was attended by the President of the Constitutional Court of Georgia, Zaza Tavadze.

On 1-2 June, 2017, the delegation of the Constitutional Court of Georgia, led by the President of the Court, Zaza Tavadze were in Kharkov, where they took part in the 2nd Congress of the Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions, which was hosted by the Constitutional Court of Ukraine. Zaza Tavadze addressed the participants of the Congress in the speech and discussed the application of standards of international law in the case law of the Constitutional Court of Georgia.

It is noteworthy, that the Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions was founded in 2015 and it unites Constitutional Courts of Georgia, Ukraine, the Republic of Moldova, and the Republic of Lithuania.

The mission of the Association is to foster the protection of human rights and fundamental freedoms, to support the independence of Constitutional Courts, to implement

the principle of rule of law and to promote sharing of experience among members of the Association.

It should be noted, that according to the decisions made at the II Congress of the Association, from January, 2018 the Constitutional Court of Georgia takes over the presidency of the Association of Constitutional Justice of the Countries of Baltic and Black Sea Regions. As part of the presidency of the Constitutional Court of Georgia, the III Congress of the Association will be held in May, 2018, in Tbilisi

iv. Meetings and Visits in 2017

The Constitutional Court of Georgia closely cooperates with the Constitutional Courts of other countries and international institutions in the format of international conferences, bilateral and multilateral meetings.

The following visits, undertaken in 2017 are worth noting:

- 27 January – The President of the Constitutional Court of Georgia, Zaza Tavadze visited Strasbourg to participate in the events of official opening of the new judicial year of the European Court of Human Rights. As part of this visit, Zaza Tavadze had meeting with the President of the Court, Guido Raimondi. The President of the European Court of Human Rights offered the President of the Constitutional Court to become member of the Superior Court's Network (SCN) founded under the aegis of the European Court of Human Rights. This Network involves exchanges on case law and related information among the member courts. At the private meeting, the parties discussed the landmark judgements of the Constitutional Court and growth of the number of applications to court.
- **2-3 March** – The President of the Constitutional Court of Georgia, Zaza Tavadze and the Member of the Constitutional Court, Giorgi Kverenchkhiladze attended International Conference: "Evolution of Constitutional Control in Europe: Lessons Learned and New Challenges" in Chishinau. At the Conference Zaza Tavadze spoke about the institutional dialogue between the Constitutional Court of Georgia and the European Court of Human Rights. He emphasized those cases, where the Constitutional Court of Georgia referred to the case law of the European Court of Human Rights and vice versa.
- **6 March** – The President of the Constituional Court of Georgia, Zaza Tavadze visited Brussels, to have the working meeting in the capacity of chairman of the XVII Congress of the Conference of European Constitutional Courts with the First Vice-President of the European Commission, Frans Timmermans. The parties shared their opinions about the current issues of the Conference.
- **3-4 April** – Upon the invitation of the Venice Commission, President of the Constitutional Court of Georgia, Zaza Tavadze participated in the International Conference

"Interaction between Constitutional Courts and Similar Jurisdictions and Ordinary Courts" in Cyprus. At the meeting, Zaza Tavadze gave a speech and spoke about the experience of relationship between the Constitutional Court of Georgia and the common courts. Within the frames of the Conference, the President of the Constitutional Court had meeting with the President of Venice Commission, Gianni Buquicchio.

• **23-26 April** – The President of the Constitutional Court of Georgia, Zaza Tavadze and the Member of the Constitutional Court, Tamaz Tsabutashvili, attended the Congress on Constitutional Justice in South Africa on the topic "Protection of Judicial Independence and Rule of Law". In the capacity of President of the Conference of European Constitutional Courts, Zaza Tavadze gave welcome speech and spoke about the responsibility of judges in the process of administration of justice, which all of them bear with regard to protection of democracy, rule of law and human rights in their respective countries.

• **25-26 April** – The delegation of the Constitutional Court of Georgia, led by the President, Zaza Tavadze attended the International Conference dedicated to 55th Anniversary of the Constitutional Court of Turkey. Zaza Tavadze had a bilateral meeting with the President of the Constitutional Court of Turkey, Zühtü Arslan. The Memorandum of Cooperation was signed between two Courts within this meeting.

• **27-28 April** – The Vice President of the Constitutional Court of Georgia, Teimuraz Tughushi visited Republic of Belarus and participated in the International Conference "The Role of the Constitutional Review Bodies in Ensuring Rule of Law in Law-Making and Enforcement".

• **6 October** – The Vice President of the Constitutional Court of Georgia, Teimuraz Tughushi, upon invitation of the Republic of Moldova, took part in the ceremony dedicated to the 20th anniversary of the entry into force in Moldova of the European Convention on Human Rights.

• **18-21 October –** Member of the Constitutional Court of Georgia, Giorgi Kverenchkhiladze took part in the XXII International Conference "Role of the Constitutional Courts in Overcoming Constitutional Conflicts".

• **24-25 October** – President of the Constitutional Court, Zaza Tavadze and Member of the Constitutional Court, Irine Imerlishvili took part in the International Conference held in Vilnius on the topic "The Role of the Constitutional Courts of Georgia, Republic of Moldova, Lithuania and Ukraine in Ensuring the Implementation and Protection of the Principles of the Rule of Law in the Context of Regional Challenges".

v. Cooperation with International and Donor Organizations

The Constitutional Court also actively cooperates with international and donor organizations. EU funded Judiciary Support Project "EU4Justice" is particularly noteworthy among them, as the Court successfully carries out various activities for institutional capacity-building and increasing efficiency of the constitutional review within the framework of this Project.

In 2017 the following activities were carried out within the afore-mentioned Project:

- On 23-26 February, Constitutional Court held workshop at the hotel "Lopota Lake Resort". The first session of the workshop was dedicated to the discussion of the plan of the Court's institutional development. The presentation on the communication strategy of the Court was given. In the second session, representatives of non-governmental organizations, academia and the team of representation of the Parliament of Georgia in the Constitutional Court joined the workshop. The discussion on the second session touched upon the issues of cooperation with the civil sector, the latest seminal judgements of the Constitutional Court of Georgia and topical legal issues at that moment.
- On 7-9 April, the Constitutional Court hosted the representatives of media in "Hilton Batumi" within the framework of the EU4Justice Project. Participants of the working seminar were informed about the priorities and vision of cooperation with Media, which should be mentioned in the plan of communication strategy of the Court. The meeting with representatives of the media were opened by the President of the Court, who spoke about the importance of communication between the Court and the media.
- On 6-7 May, the Workshop "Effective Representation in the Constitutional Court" for the representatives of the Constitutional Court of Georgia, Committee on Legal Issues of the Parliament and the Supreme Court of Georgia was organized in Borjomi, the Crowne Plaza Hotel. The goal of the Workshop was to ensure the increased efficiency of the representation function of the Parliament before the Constitutional Court of Georgia and consideration of the legislative and practical problems related to representation of parties in the constitutional proceedings. The Members of the Constitutional Court of Georgia, Chairperson of the Supreme Court of Georgia, Members of the Committee on Legal Issues of the Parliament of Georgia, Government of Georgia, Ministry of Penitentiary and Probation, as well as Ministry of Labor, Health and Social Protection – as representatives of the respondent parties at the Court participated in the Workshop.
- On 10 October Presentation of the Institutional Development and Communication Action Plan of the Constitutional Court of Georgia was held in the Rooms Hotel Tbilisi. The Action Plan was drafted with the support of the EU technical assistance projects. The event was opened by the President of the Constitutional Court, Zaza Tavadze and EU Ambassador to Georgia, Janos Herman. Growth of efficiency and access to the constitutional review,

strengthening accountability to society and improvement of the system of management of human resources of the court are the main priorities, which the Constitutional Court will work upon in the years 2017-2019. Moreover, it is important to introduce and operate the electronic system of case-management for constitutional proceedings, which would lead to increased efficiency of the Court. The Members and employees of the Constitutional Court of Georgia, representatives of the judicial, legislative and executive branches, diplomatic corps accredited in Georgia and donor and non-governmental organizations attended the presentation.

vi. Summer School on Constitutional and Human Rights Law

In addition to its main work, the Constitutional Court of Georgia is actively involved in raising legal awareness of public. In this respect, the Summer School on Constitutional and Human Rights is worth of noting. It was held for the first time in 2008. Since then, the School trains the leaders of legal profession. In 2017 the Summer School of the Constitutional Court of Georgia hosted the 10th anniversary cohort of students.

The Summer School took place in the Constitutional Court, in Batumi from 24 July to 3 August, 2017. The participants attended the lectures on the following topics: various models of constitutional review; constitutional standards and international rules in the Criminal Procedure; freedom of religion and expression.

The lectures were given by both Georgian and foreign lecturers: Professor Richard Vogler (Sussex University), Professor Bridget Arimond (Northwestern University), Professor Nathan Sales (Syracuse University College of Law), the President of the US Solidarity Center of Law and Justice, Professor James P. Kelly (Atlanta, State of Georgia), as well as representatives of the Constitutional Court of Georgia and professors of various Georgian universities.

It is the mission of the summer school to improve the professional knowledge of future lawyers in constitutional and human rights law. The best 27 students of the Summer School were selected through competition from the applicants enrolled in Bachelor and Master degree programs at various law schools in Georgia.

It is noteworthy, that the outstanding participants of the School have opportunity to continue working in the Court, first as interns and later – as employees. One of the indicators of the success of Summer School is the fact, that the majority of the alumni of Summer School occupy leading positions both in the public and private sector.

3. Major Directions of Strengthening of Constitutional Justice

The Constitutional Court deems it important to identify in this document the significant accomplishments and challenges related to the work of the Court, which influence the protection of constitutional justice to certain extent. Their identification and analysis are important preconditions of improvement of the quality of protection of constitutional supremacy.

i. The Interest of Public in the Work of the Court

Administration of constitutional review and its outcomes have major implications on many aspects of public relations. In view of this, it is important for the Constitutional Court to raise awareness in the society about the work of the Court. One of the tools of involvement of public in the constitutional proceedings is an amicus brief, which allows any natural or legal person to present to the Court their written opinion on a specific case. The amicus briefs registered in the Court in the last year shows the interest of public to participate in administration of constitutional review. From the perspective of awareness raising of the society, the trend of active coverage by the media outlets of the ongoing proceedings of the Constitutional Court of Georgia is also noteworthy. Throughout the year, various media outlets provided information to the public about the judgements adopted by the Constitutional Court and pending cases. All this significantly helps to provide information to public and to involve them in the ongoing legal proceedings.

ii. Cooperation with Various Organizations and Representatives of the Government

The Constitutional Court deems it necessary to cooperation with international or national organizations, legislative, executive and judicial branches. This type of cooperation involves joint implementation of various activities and events, organization of workshops and conferences. It should be noted, that both representatives of Central Government, as well as of the government of Autonomous Republic of Ajara always expressed readiness for cooperation with the Constitutional Court and provided support in organization of various events. In this respect, the XVII Congress of the Conference of European Constitutional Court, with delegates of constitutional courts from over 40 countries is worth of noting. The President of Georgia, Parliament of Georgia, Government of the Autonomous Republic of Ajara and other public authorities were actively involved together with the Constitutional Court in organization and carrying out of the Congress. It should also be emphasized that local and international organizations are willing to actively participate in the discussion of acute

problems of constitutional proceedings and in finding ways for effective solution of the challenges posed by the Court. The Constitutional Court supports any form of cooperation with the State authorities, which will lead to coordinated and harmonized work on the issues of protection of constitutional supremacy and popularization of constitutional review.

iii. Cooperation between the Constitutional Court and Common Courts

The productive cooperation between the Constitutional Court and common courts is of vital important for due protection and realization of constitutional values and fundamental human rights. The common courts administer justice and ensure implementation of constitutional legal standards established by the Constitutional Court in specific cases, whereas the Constitutional Court invalidates the unconstitutional laws, ensuring thereby the legislative realm in compliance with the Constitution and therefore ability for the common courts to administer justice in line with the Constitution.

Mechanism of constitutional referral presents a crucial guarantee for administration of justice in line with the Constitution by the common courts. The mechanism of constitutional referral allows a judge of the common court to avoid application of presumably unconstitutional normative legal act. In recent years, the frequency of submission of constitutional referrals from common courts to the Constitutional Court has clearly increased and 2017 was no exception to this trend.

Application of the standards and interpretations provided in the judgements of the constitutional Court by common courts in the process of adjudication over specific cases is also worth of noting. The common courts directly interpret rules of laws in the process of adjudication; therefore it is important that interpretation and application of a rule is in compliance with the order established by the Constitution of Georgia. In this respect whole range of decisions of the Supreme Court of Georgia are noteworthy, where reasoning and legal conclusion are based on the interpretations made by the Constitutional Court. The Supreme Court of Georgia based its reasoning on the standards established by the Constitutional Court of Georgia in its Judgement №3/1/531[37] and interpreted accordingly the time-related limits of realization of the right of access to court in its Ruling Nას-475-443-2017 of 23 June, 2017. Example of the same trend is the Ruling №ას-871-838-2016 of the Supreme Court of Georgia of 28 April, 2017, where the Supreme Court used the concept of social function of right to

[37] The Judgement №3/1/531 of the Constitutional Court of Georgia of 5 November, 2013 in the case of "Citizens of Israel – Tamaz Janashvili, Nana Janashvili and Irma Janashvili v. The Parliamet of Georgia".

property interpreted in the Judgement N2/1/370,382,390,402,405[38] of the Constitutional Court for determining the scope of the enjoyment of the right to property and based the final decision on the standard provided in the afore-mentioned Judgement. In view of the goals of this document, there is no need to exhaustively review the practice of application of Constitutional Court judgements by the common courts. However, the above examples demonstrate, that the common courts actively use the interpretations of the Constitutional Court and try to interpret the applicable provisions in line with the constitutional standards.

iv. Relation of the Constitutional Court with the Parliament of Georgia

In the majority of cases reviewed and decided in the last year, the respondent was the legislative body of Georgia – the Parliament. Despite the fact, that the Constitution binds each branch of government to adhere to the requirements of the Constitution in their actions, in view of the nature and scale of legislative process it is impossible to rule out the risk of violation of fundamental rights. The effective mechanism to respond to this risk is implementation of constitutional review by the Constitutional Court.

a. Recognition of Constitutional Complaint

Application of normative legal act may lead to legal outcomes, which was not intended or does not comply with the will of its issuing authority and purposes and objects at the moment of adoption of the legal act. Understanding of the full scale of scope of the normative legal act can only be acquired through its practical application. Moreover, in certain cases, the content of the rule is influenced by the practice of its application by the responsible authority or other factors.

There were cases in practice of the Constitutional Court of Georgia, where the Parliament of Georgia recognized the constitutional complaint at the hearing of the case in the Constitutional Court, as it considered that rule actually produced the legal problems, which were not compatible with the established constitutional order. However, the legislative body did not undertake any active measures to solve the problem within its own competence and did not repeal the provisions that were unconstitutional, in its view. Similar fact also occurred in 2017. For example, the complainant of the constitutional complaint N863 challenged the regulations, which prohibited election of a persons above 70 years to the adminsitrative

[38] The Judgement №2/1/370,382,390,402,405 of the Constitutional Court of Georgia of 18 May, 2007 in the case of „Citizens of Georgia, Zaur Elashvili, Suliko Mashia, Rusudan Gogia and others and the Public Defender of Georgia v. The Parliament of Georgia“.

position of the National Academy of Sciences of Georgia. Despite the fact, that the representative of the Parliament of Georgia referred to the flaws in the disputed regulation at the hearing of the case on merits in the Constitutional Court and recognized the constitutional complaint, no active steps followed by the Parliament of Georgia, in order to solve the problems caused by a rule incompatible with the constitution through its own competence.

b. Implementation of the Constitutional Standards Established by the Constitutional Court in Legislation

Regulation of any sphere by the legislator should fully comply with the strictures of the Constitution of Georgia. It is the case law of the Constitutional Court through which Constitution is interpreted and constitutional standards are determined. Therefore, taking into account the legal acts adopted by the Constitutional Court significantly determines the protection of constitutional supremacy in the law-making process.

There were cases identified in the practice of the Constitutional Court, when the legislator failed to consider the standards established by the Constitutional Court in the process of elaboration of legislation to regulate certain relations. Despite the fact, that the Constitutional Court of Georgia declared unconstitutional application of imprisonment as punishment for purchase and storage of up to 70 grams of marijuana for personal consumption purposes by the Judgement N1/4/592 of 24 October, 2015, the Parliament of Georgia did not act with the due promptness to incorporate the established standards in the legislation. Due to this dozens of complaints and referrals were submitted to the Constitutional Court, which addressed the constitutionality of application of imprisonment for the crime of purchase and storage of different amounts of marijuana. Therefore, the Constitutional Court faced the necessity, to consider the constitutionality of application of imprisonment for purchase and storage for personal consumption purposes of less than 70 grams, but different quantities of dried marijuana separately, in the proceedings over numerous constitutional complaints and to declare the disputed rules unconstitutional without consideration of these cases on merits. When the established constitutional standards clearly indicate the unconstitutionality of a rule, it would be appropriate for the legislator to rectify the rule itself instead of waiting for the Constitutional Court to invalidate the disputed rules without consideration on merits, via rulings.

In 2017, the similar cases to those discussed above were not related only to purchase and storage of marijuana. In 2017, the Court adopted 6 rulings, where it declared the disputed

provision invalid, without consideration of the case on merits. None of these cases were related to adoption by the legislator of a regulation with the contents similar to the rule declared unconstitutional in the period following the pronouncement of judgement. Instead of this, the regulations with the similar content to the rules declared unconstitutional by the Constitutional Court still remained in the legislation and the responsible authority did not take any measures to eliminate the problem. Constitutional Complaint N1218 can serve as an example. This complaint challenged the regulation under which an employee unlawfully dismissed from the Special Penitentiary Service would receive the salaries for the period involuntary absence in the amount not exceeding 3-month salary. The complainants indicated, that the disputed rule contained the content similar to the rule declared unconstitutional by the Judgement N2/3/630 of the Constitutional Court of Georgia and requested declaration of its unconstitutionality in summary proceedings, without consideration of the case on merits. At the preliminary session, the representatives of the Parliament of Georgia asserted, that indeed the disputed rule contained the content similar to the rule declared unconstitutional by the Constitutional Court. However, they added, that it was the position of the Parliament of Georgia, that the disputed rule served legitimate aims and it should not be declared unconstitutional. It should be noted, that the legislator, as well as any other person are obliged to respect unconditionally and contribute to the due implementation of the judgements of the Constitutional Court of Georgia.

It is also noteworthy, that from the perspective of incorporation of standards of the judgements of the Constitutional Court into the legislation, the situation is significantly different with regard to those judgements, enforcement of which was postponed by the Constitutional Court. The Constitutional Court postpones the enforcement of judgement, when immediate invalidation of a disputed rule may lead to the material damage of private or public interests. The goal of postponement of its judgement by the Constitutional Court is not to leave without regulation such legal relationships, which, in view of their nature, constantly need legal regulation and the Court gives certain time to the respondent party, so that it is able within this period to regulate legal relationships in line with the Constitution of Georgia.

In this respect, the Judgement[39] adopted on the constitutional complaint N659 by the Constitutional Court of Georgia is noteworthy as it postponed the invalidation of the disputed rules and within the transitional period the Parliament of Georgia prepared new regulations. In the constitutional complaint N659 the complainant challenged those provisions of the Organic Law of Georgia on Common Courts, according to which the judges of appellate and

[39] The Judgement №3/1/659 of the Constitutional Court of Georgia of 15 February, 2017 in the case of „Citizen of Georgia, Omar Jorbenadze v. The Parliament of Georgia".

district (city) courts should be appointed for 3 years and after passing of this period, the High Council of Justice would consider the issue of their lifetime appointment. The complainant asserted, that appointment of every judge for the trial period, without taking account the time s/he had spent working as judge, contradicted the Constitution of Georgia. The Constitutional Court pointed out, that in case of those persons, who already had three-year experience of serving as a judge and it was objectively possible to study his/her work, additional requirement to serve for the time defined by the disputed rule constituted a redundant and unjustified barrier. Despite the fact, that the disputed rule was declared unconstitutional, the Constitutional Court considered, that appraisal of the past work of the candidate for judgeship required legislative regulation of the respective procedure, for which the legislator should be given a reasonable time to elaborate the solution in line with the Constitution. In view of this, the Constitutional Court postponed the enforcement of its judgement until 1 july, 2017. It is noteworthy that on 16 June, 2017, the Parliament of Georgia made whole range of amendments to the Organic Law of Georgia on Common Courts. The goal of amendments, among others, was regulation of the procedure of appointment of judges in appellate and district (city) courts in view of the standard established in the judgement of Constitutional Court.

After postponement of enforcement of judgement, the Parliament of Georgia adopted legislative amendments on numerous occasions in the past. Among others, the legislation regulating the institution of incapacity has qualitatively changed. In the process of elaboration of legislation, taking into account by the legislative body of the standards established in the legal acts of the Constitutional Court will clearly have a positive effect on protection of constitutional justice; it will create a fertile ground for effective realization of fundamental human rights. The legislator is obliged to regulate any single legal relationship in line with the Constitution, to regard the standards established by the Constitutional Court and to enforce its judgements. For analysis of the judgements of the Constitutional Court and for their accurate understanding by the respective bodies, it is crucial that there is a broad discussion with regard to judgements of the Constitutional Court and that representatives of public and the State are actively involved in it.

v. Correction of Legal Flaws in Disputed Rules by the Respondent Party

There are noteworthy cases, where the respondent party took into account the arguments presented in the constitutional complaint and amended the legal act, which entailed the problem indicated by the complainant. Example of this would be constitutional

complaint N861 in which the complainant challenged those provisions, which determined the procedure of giving the patient queue number in the medical program and their transfer to medical institution based on this number for purposes of transfer of defendants and convicts to the civil sector health care institutions. The complainant asserted that the female prisoners had to wait longer in the queue, than males, which violated the right of female prisoners to be timely transferred to the hospitals of civil sector. The respondent stated at the preliminary hearing in the court, that there were number of problematic issues raised in the complaint, which should be regulated at the legislative level and intensive work was carried out in this respect. Under the Order N49 of the Minister of Penitentiary and Probation of 9 June 2017, the amendments were made to the legal act challenged in the constitutional complaint N861 and the issue of giving a queue number and transfer of patient to the medical institution underwent a novel regulation.

The attempt of a novel regulation of a disputed issue by the respondent party, in case, they consider the constitutional complaint/referral well founded, is a way to effectively and promptly improve the state of rights of a complainant.

vi. Problem of Reasoning in Complaints

It is statutory requirement that constitutional complaints and referrals should be reasoned. The constitutional complaint/referral should identify the complainant's problem and there should be an appropriate relation between the disputed provision and the constitutional provision. The reasoning in the complaint is an important component of effective fulfillment of its functions by the the Constitutional Court, as it is the reasons presented by the complainant which allow for clear and precise identification of the problem of the complainant and examination of constitutionality of a disputed rule. In case of the lack of reasoning in complaint, it fails to duly present the facts of violation of complainant's rights, on the one hand and leads to inefficient spending of the scarce resources for the Constitutional Court, on the other hand.

In this regard, cases when the complainants challenge the whole text of laws, without bringing the complete reasoning in the complaint/referral should be mentioned. The reasoning does not show what specific legal problems are entailed by specific provisions of the challenged law and a complainant brings only general arguments, which in certain cases, is not sufficient for admission of a constitutional complaint for consideration on merits. This trend and its negative repercussions, as well as the relevant case law of the Constitutional Court on this issue, has been given a detailed treatment in this document, as it is important for the effective

constitutional adjudication, that complainants identify correctly and with sufficient precision those provisions, which in their opinion lead to unconstitutional outcomes.

As it was already mentioned, lately number of constitutional complaints has significantly increased. Therefore it is an important task of the Constitutional Court, to manage in each case to carry out prompt, speedy and effective constitutional review. Against the background of rising number of constitutional complaints, the number of complaints, which lack reasoning, has also increased. Challenging the whole text of law without relevant arguments is hindering factor for effective constitutional review, as the scarce resource of the Constitutional Court is spent on examination of those complaints, which have no potential to protect the rights of complainants. If this trend persists or grows, overload of the Constitutional Court with ill-founded and meritless complaints will materially worsen protection of constitutional supremacy and will have negative effect on effective protection of human rights.

Protection of constitutional supremacy is a multidimensional process, where every branch of government should be constantly engaged. Their active and proper involvement will drastically simplify the protection of constitutional order and the values enshrined in the constitution. The eradication of hindering factors listed in this document will be significantly instrumental in effective protection of constitutional justice in the country. We believe, that informing the branches of government and the society about these challenges is a first-order task, in order to understand them and to find solutions for their eradication and to make it possible to carry out even more effective constitutional review, at the end of the day.

4. Statistical Overview of the Court's Activities

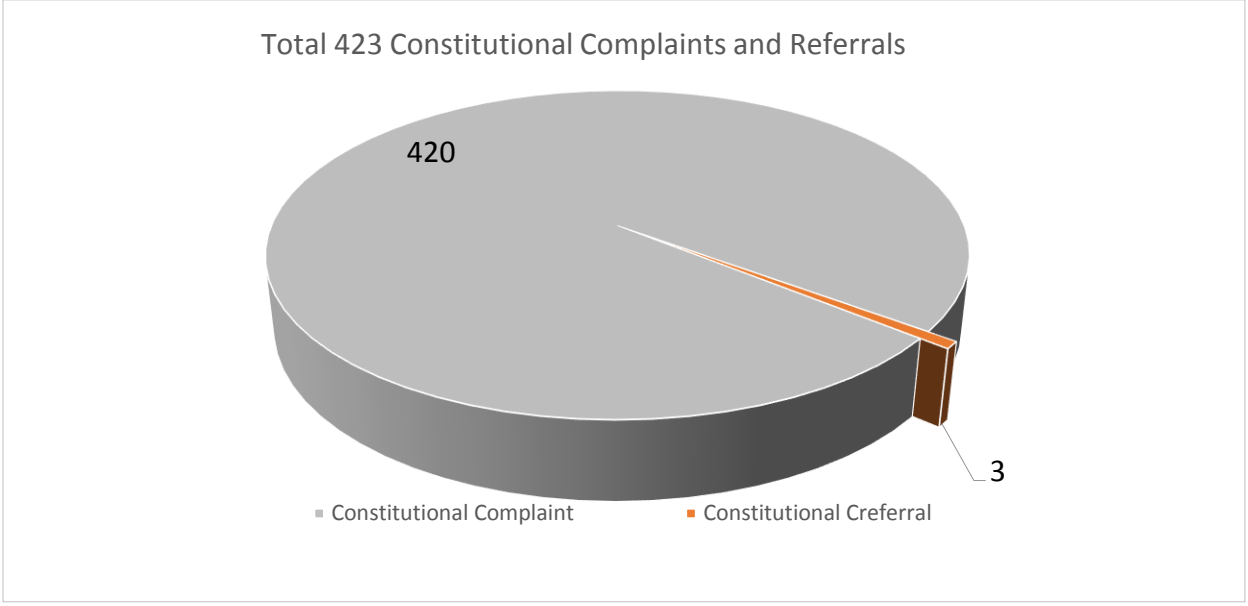
The Statistical data provides important information about the activities of the Constitutional Court of Georgia, main features of the constitutional adjudication and constitution justice in Georgia. Below you can find the charts, which provide summarized data of the Constitutional Court of 2017, which describe the main areas of the activities undertaken by the Court in 2017. Moreover, for simplicity and more clarity for perception of the data, here follows several definitions.

"Case" and "Complaint" - Certain part of statistical data deals with the finalized 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. For example, the judgement No. 1/650, 699 finalized the constitutional proceedings on two constitutional complaints, judgement No. 1/9/701,722,725 finalized the constitutional proceedings on three constitutional complaints, etc.

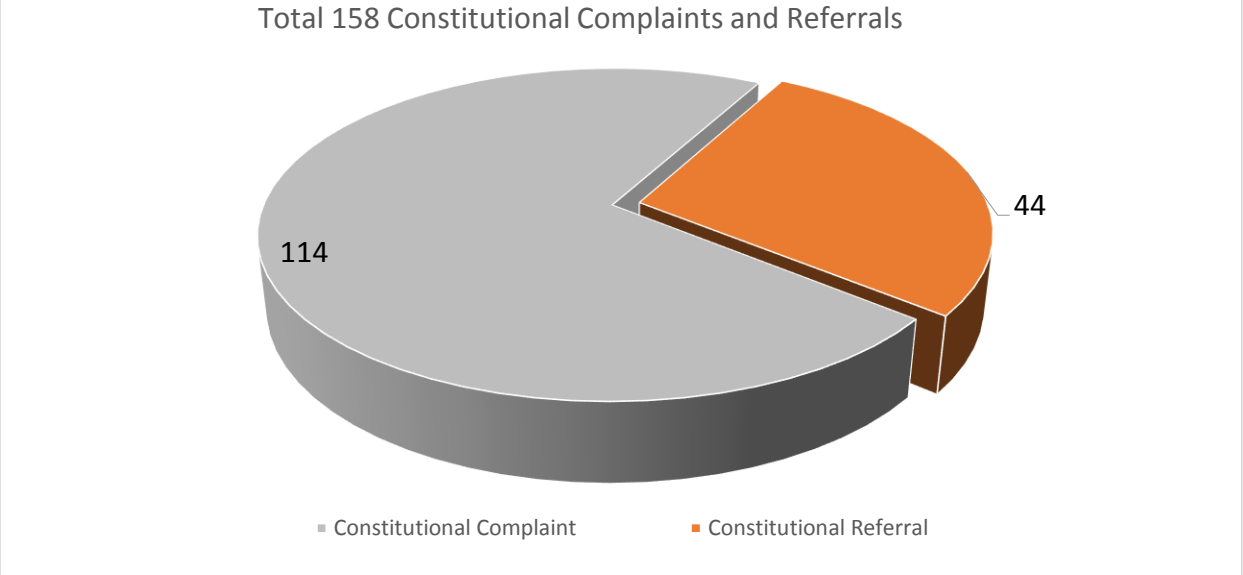
Competences – The chart N6 provides information on finalized cases by the competences. The competences of the Court are regulated under the Constitution of Georgia and legislation on the operation of the Constitutional Court of Georgia. The chart identified the competences according to Article 19 of 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 Provisions - The charts N7 and N11 separately present the overruling provisions. Here we refer to the cases provided in Article 25(4^1) 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.

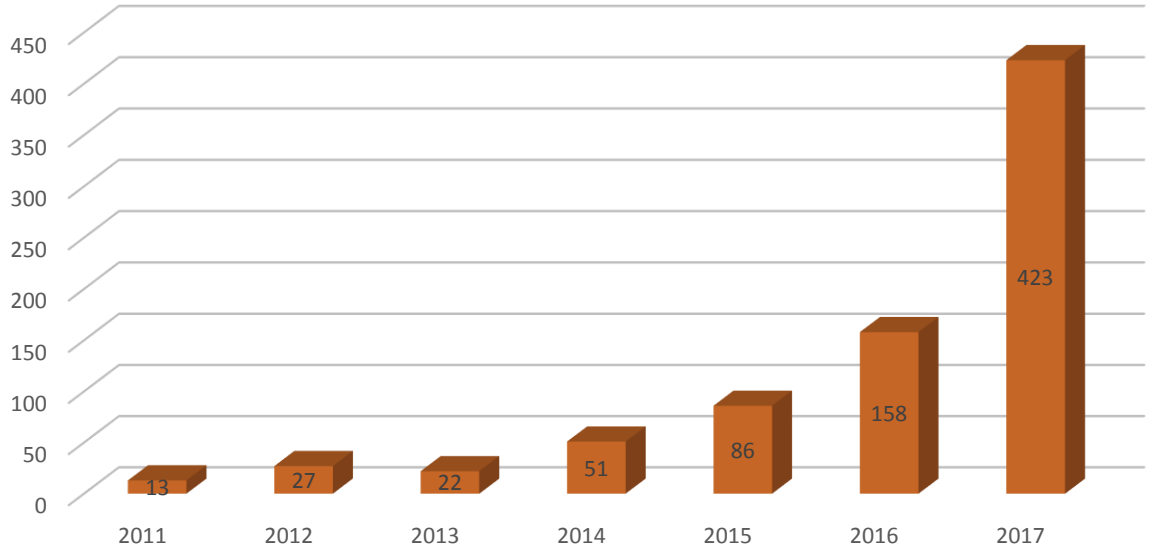
N1. Number of Registered Constitutional Complaints and Referrals in 2017



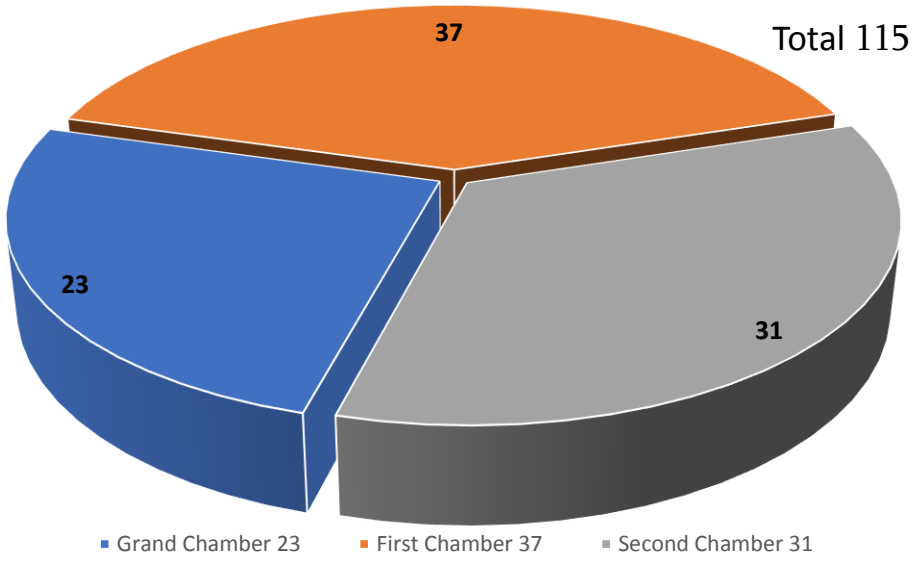
N2. Number of Registered Complaints and Referrals in 2016



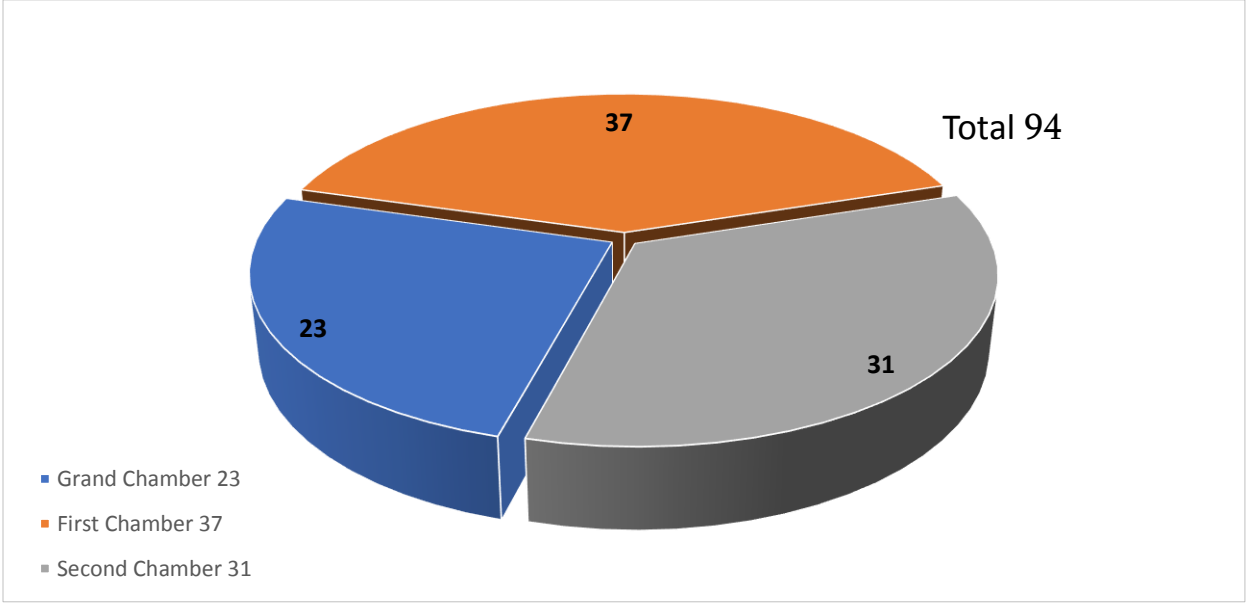
N3. Number of Constitutional Complaints and Referrals by Years



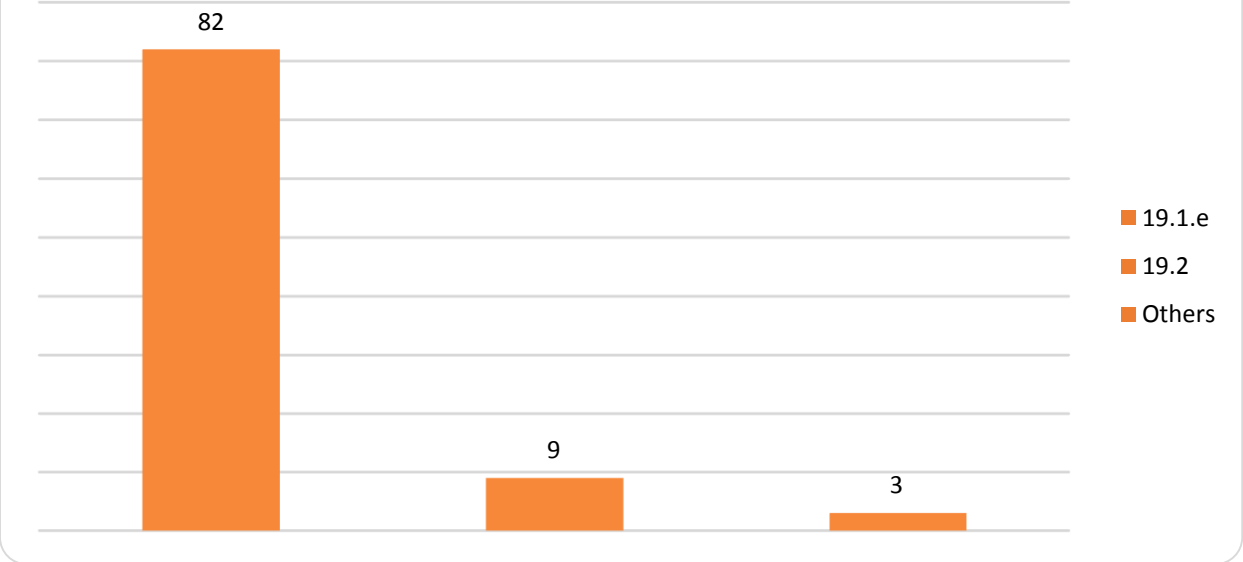
N4. Constitutional Complaints, Proceedings on Which Finalized in 2017



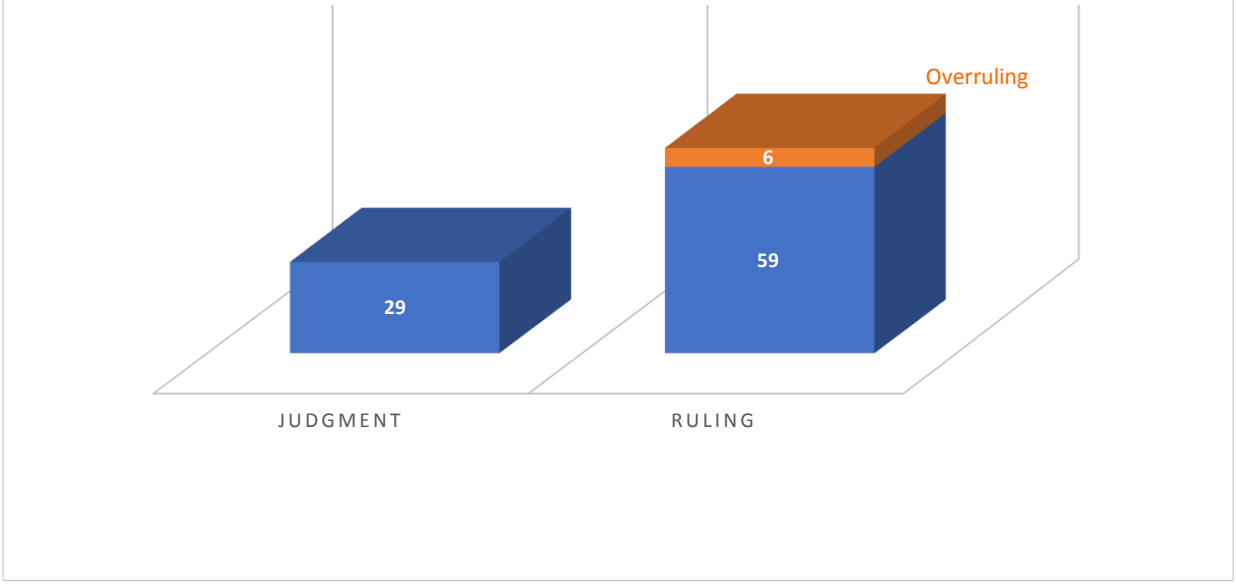
N5. Number of Cases Finalized by the Constitutional Court in 2017



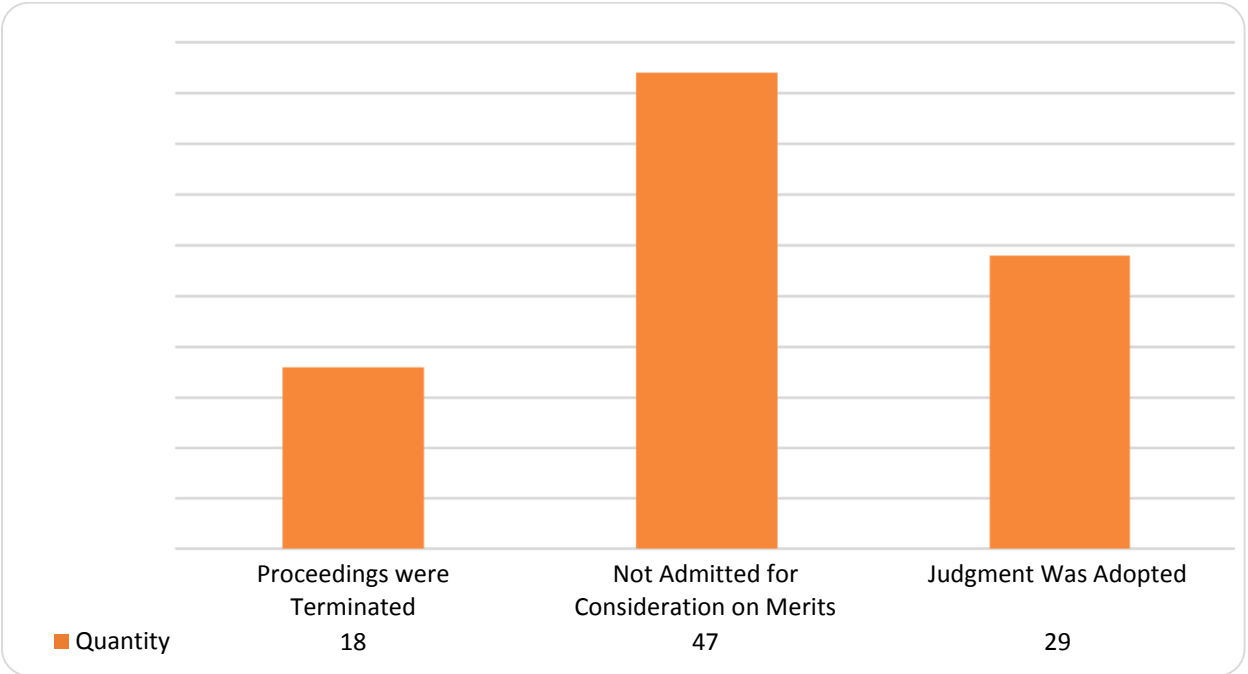
N6. Cases Finalized by the Constitutional Court in 2017 by Competences



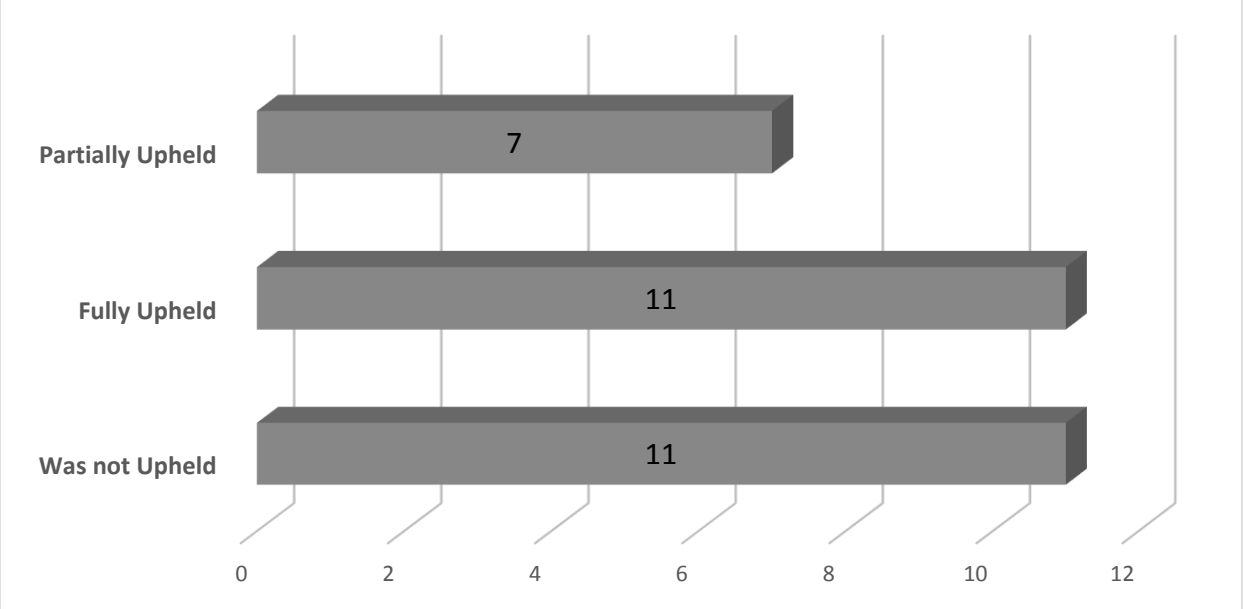
N7. Final Acts of the Constitutional Court in the Cases Finalized in 2017



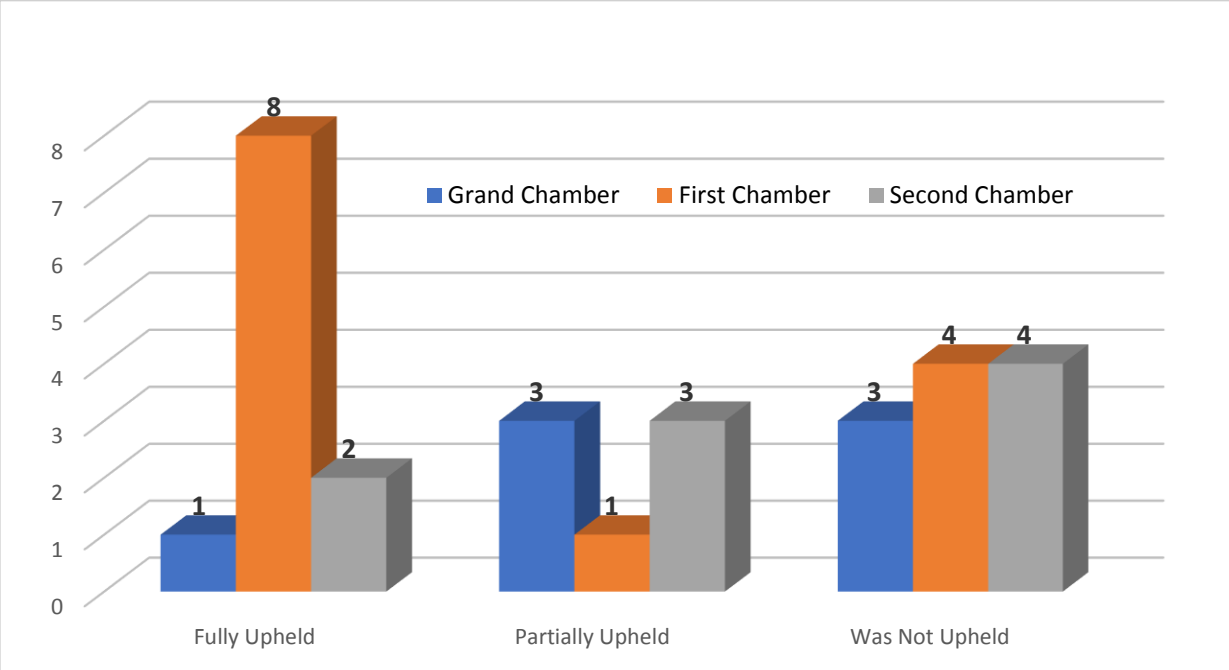
N8. Grounds of Finalization of Cases by the Constitutional Court in 2017



N9. Judgements of the Constitutional Court by Their Outcome



N10. Outcomes of Judgements of the Court by Chamber/Grand Chamber Adjudicating the Case



N11. Recording Notices Adopted by the Constitutional Court in 2017