

CONSTITUTIONAL COURT OF GEORGIA

Information on Constitutional Justice in Georgia

2020

Table of Contents

Introduction	4
1. Overview of the Curt Practice	5
1.1. Acts adopted at the preliminary hearing	5
1.1.1. The requirement for substantiation of the constitutional claim / submission 6	
1.1.2. Filing of a constitutional claim by an authorized subject.....	18
1.1.3. Jurisdiction of the Constitutional Court	21
1.1.4. All disputed issues referred to in the constitutional claim or the constitutional submission have already been decided by the Constitutional Court	25
1.1.5. Subsidiarity.....	26
1.2. Norms, which override adopted decisions.....	27
1.3. Decisions	31
1.3.1. Plenum.....	31
1.3.2. First Panel.....	46
1.3.3. Second Panel	54
2. International relations and other activities	68
2.1. Public communication and publishing activities	68
2.1.1. Electronic portal of litigation	68
2.1.2. Editions of the “Journal of the Constitutional Court”	69
2.2. International Relations	71
2.2.1. Significant visits of the President/members of the Court in 2020	71
2.2.2. Cooperation with the diplomatic corps accredited in Georgia, international and donor organizations	73
2.2.3. EU and Council of Europe co-financed project "Support to Judicial Reform in Georgia"	74
2.2.4. Conference of European Constitutional Courts	75
3. Important directions for strengthening constitutional legitimacy	76
3.1. Constitutional-legal standards set in 2020.....	76
3.2. Steps taken by the Constitutional Court to function effectively in the face of a number of restrictions caused by the new Coronavirus pandemic	85

3.3. Appointment of members of the Constitutional Court and election of the President of the Court.....	86
4. Enforcement of the decisions of the Constitutional Court and implementation of the standards established by the decisions.....	87
4.1. Postponement of annulment of the impugned norm.....	88
4.1.1. Cases on which legislative changes have not been made	88
4.1.2. Cases on which legislative changes have been adopted after the expiration of the term determined by the Constitutional Court of Georgia.....	91
4.1.3. Cases on which the competent bodies settled the issue within the time limit set by the Constitutional Court of Georgia and cases on which the time limit set by the Constitutional Court of Georgia has not expired	92
5. Statistical review of the activities of the Constitutional Court of Georgia for 2020	93

Introduction

Striving towards establishment of a democratic, social and legal state is the main idea on which the Constitution of Georgia is based and this is its main pillar. The Constitution of Georgia imposes an obligation on the state in exercising of its power, to respect human rights, refrain from their unjustified restriction, and to ensure the possibility of free realization of these rights. Naturally, the full realization of these values can be achieved only by upholding the supremacy of the Constitution and adhering to the principles expressed in it. Protection of the supremacy of the Constitution is an unconditional obligation of each branch of the power, however, a special role in this process is played by the Constitutional Court of Georgia, which, through constitutional control, ensures effective protection of fundamental human rights and freedoms.

At present, the main part of activities of the Constitutional Court of Georgia are aimed at examining the constitutionality of the relevant normative acts on the basis of constitutional claims of natural and legal persons, as well as the Public Defender of Georgia. Although the cases are considered by the Constitutional Court of Georgia on the basis of a constitutional claim of an individual, in case the normative act or part of it is declared unconstitutional, the court decision has a significant impact on the society, or its part. However, the explanations and arguments provided by the Constitutional Court of Georgia in each case may indicate to the need of refining of the legislation and entering amendments into it. In view of the above, it is extremely important that comprehensive information is provided to both the government officials and interested members of the public on the activities and practice of the Constitutional Court.

According to Article 12, Paragraph 2 of the Organic Law of Georgia on the Constitutional Court of Georgia, the President of the Constitutional Court shall, once a year, submit information on constitutional legality in Georgia to the President of Georgia, the Parliament of Georgia and the Supreme Court of Georgia. Present document includes a summary of the activities carried out by the Constitutional Court of Georgia in 2020. In particular, it provides an overview of the activities carried out by the Constitutional Court within the framework of constitutional review over the past year, new challenges that it came across in practice, as well as all the information, about which it is important to inform the public.

One of the most important event and challenges caused by it not only in Georgia, but throughout the world over the past year, has been the new coronavirus pandemic, which has naturally had a significant impact on many spheres, including the ordinary way of handling various litigation processes in the Constitutional Court. The pandemic and various restrictions imposed for the purpose of its prevention has had the greatest impact on the process of conducting of traditional oral proceedings in a courtroom. In this regard, it is important to note

that last year the Constitutional Court switched to the remote mode of conducting of hearings using relevant technical means. Also, it should be noted, that each of these oral hearing sessions are broadcasted live online, via the YouTube channel of the Constitutional Court, and any interested parties can have access to it.

Present document consists of 5 chapters. Chapter I deals with the review of the practice of the Constitutional Court of Georgia during 2020. This part of the document discusses in detail the requirements for substantiation of the constitutional claim/submission and the grounds for refusal of admission of claims for consideration on the merits, as well as relevant problems identified at the stage of the preliminary hearing. Chapter I also provides a brief overview of all the decisions of the Constitutional Court, reached in 2020 and the rulings on norms, overriding reached decisions.

Chapter II of the document contains information on international measures taken by the Constitutional Court over the past year. Chapter III is devoted to an overview of important directions of strengthening the constitutional legitimacy in the country in 2020. Chapter IV contains overview of enforcement of the decisions of the Constitutional Court of Georgia and implementation of the constitutional-legal standards established by the decisions. Finally, Chapter V of this document presents statistics on claims filed with the Constitutional Court in 2020, considered cases, adopted acts, and other topical issues of constitutional proceedings.

The document, due to the information presented in it, will be of practical value not only for representatives of the legislature, executive and judiciary, but shall also provide significant assistance to individuals, interested in filing constitutional claims, as well as media representatives, academics, non-governmental organizations, students and other parties, interested in the activities of the Constitutional Court.

1. Overview of the Curt Practice

1.1. Acts adopted at the preliminary hearing

According to the well-established practice of the Constitutional Court of Georgia, a constitutional claim/submission will not be considered on the merits if it does not meet the formal and material requirements provided by law, for example, is not substantiated, is submitted by an unauthorized entity, the Constitutional Court is not authorized to consider the issue, the requirement of subsidiarity is infringed and etc. At the stage of the preliminary hearing, the constitutional claims/submissions, filed in violation of these requirements are deemed inadmissible for consideration on merits, which protects the court from unfounded/unsubstantiated constitutional claims/submissions and serves the purpose of exercising of effective constitutional control. Thus, it is important to inform the public,

including potential plaintiffs, about the grounds for rejection of a constitutional claim/submission for consideration on merits, so that they can clearly and easily identify all the circumstances, that may lead to finding filed constitutional claim/submission inadmissible.

1.1.1. The requirement for substantiation of the constitutional claim / submission

Among the preconditions for accepting a constitutional claim/submission for consideration on merits, it is important to single out the requirement of substantiation, which consists of several criteria. According to Article 31, Paragraph 2 of the Organic Law of Georgia on the Constitutional Court of Georgia, a constitutional claim or a constitutional submission must be substantiated. Consequently, the plaintiff or the author of the constitutional claim or submission must include evidence, which confirm that the claim or submission is substantiated.

According to the court practice of the Constitutional Court, in order to ensure, that a constitutional claim is substantiated, it is necessary, among other requirements, to satisfy two requirements: a) the substantiation must relate to the content of the impugned norm and b) the substantive relation between the disputed norm and the provision of the Constitution, in relation to which it is requested to recognize its unconstitutionality, must be substantiated.

a) The substantiation is not related to the content of the disputed norm

One of the important factors of a constitutional claim is the correct perception of the content of the disputed norm by the plaintiff. The Constitutional Court is authorized to consider and assess the constitutionality of the real content of a normative act only. Consequently, it is essential that the plaintiff correctly perceives the content of the challenged norm. The analysis of the practice of the Constitutional Court of Georgia shows that misunderstanding of the content of the disputed norm by the plaintiffs remains a topical problem. Below are provided examples of the constitutional claims, that have been found inadmissible for consideration on merits due to the abovementioned issue.

For example, in the case of "Eduard Marikashvili and Giorgi Chitidze v. the Parliament of Georgia and the Government of Georgia" (Constitutional claim №1515)¹ the plaintiff disputed, inter alia, the constitutionality of paragraph 12 of Article 11 of the Resolution № 322 of the Government of Georgia of May 23 of 2020 on the Approval of the Rules of Isolation and

¹ Minutes N1/12/1515 of the Constitutional Court of Georgia of November 12 of 2020 in the case of the case "Eduard Marikashvili and Giorgi Chitidze v. The Parliament of Georgia and the Government of Georgia".

Quarantine. According to the disputed norm, the decision on isolation of a natural person (quarantine, self-isolation) is made by the relevant authorized service in writing or orally. In case of oral decision, within no later than 5 days, the decision was made in writing by the decision maker.

To prove the unconstitutionality of the impugned norm, the plaintiff, on the one hand, indicated that it was problematic for the executive power to delegate authority to restrict physical liberty, and on the other, referred to the fact that decisions on placing of a person in quarantine/isolation were reached by the executive power without the judiciary control.

According to the Constitutional Court of Georgia, the disputed norm determined the form and procedure of adoption of a decision to place a person in isolation/quarantine. The impugned norm did not contain any regulation on delegation of powers to restrict a person's physical liberty. In addition, the circle of decision-makers, authorized to arrive to decision on placement of a person into quarantine/isolation, was defined by other norms of the legislation. In view of the above, the Constitutional Court held that the plaintiff had misunderstood the content of the above referred norm, and hence, did not admit this part of the claim for consideration on the merits.

In the case of "Ltd. Transcaucasian Crystal L" v. the Parliament of Georgia "(Constitutional claim №1433)² the plaintiff challenged, inter alia, the constitutionality of paragraph 2 of Article 49, paragraph 1 of Article 55 and Article 61 of the Law of Georgia on Enforcement Proceedings in relation to paragraph 1 of Article 19 of the Constitution of Georgia. According to the plaintiff, the disputed norms excluded the obligation of the bailiff, in case of several properties owned by the debtor, to seize and forcibly auction the property of proportional value of the creditor's claim, and, if possible, divide the real estate under one cadastral code into parts/lots, in order to sell at the forced auction the share of the property, which is proportionate to the claim.

According to the Constitutional Court, Article 49 of the Law of Georgia on Enforcement Proceedings defines the form of sale of the movable property attached by the National Bureau of Enforcement, while paragraph 1 of Article 55 Article 61 define the list of claims subject to enforcement and types of immovable property. Therefore, the disputed norms did not regulate the issue of how much and in what order the debtor's real estate should be put up for public auction by the bailiff. Neither did the disputed norms establish the legal basis for attachment/sale of property. Therefore, the claim of the plaintiff in this part was based on misconstruction of the content of the impugned norms.

² Judgment of the Constitutional Court of Georgia №1/8/1433 of April 30 of 2020 in the case "Ltd. Transcaucasian Crystal. v. Parliament of Georgia".

In the present case, the Constitutional Court further clarified that as according to the plaintiff's position, the constitutional right to property was restricted due to the lack of certain obligations of bailiff during the sale of the property, in such case the plaintiff should have required to declare unconstitutional the norm, which was explicitly excluding such obligation of the National Bureau of Enforcement, while in the absence of such special norm, the plaintiff should have challenged the provision of the law, which provided the basis for restriction of the right, i.e. in given case, the general authority of the bailiff to sell the debtor's property.

a.a) Appeal against a specific grammatical unit of a normative act

Given the practical purpose of this document, the Constitutional Court considers it appropriate to emphasize once again the problematic aspect of substantiating a claim related to the appeal of specific grammatical units (words) of a normative act.

According to the Constitutional Court, it is empowered to consider only the constitutionality of a normative act, that may violate a fundamental right or other constitutional provision. In the court practice of the Constitutional Court there have been cases when a plaintiff appealed not to the norm establishing a specific rule of conduct, but specific words and grammatical units of a normative act, from which it is impossible to identify any rule of conduct.

In the case of Tornike Artkmeladze v. the Parliament of Georgia, the President of Georgia and the Government of Georgia (Constitutional claim № 1503)³ the plaintiff was disputing, inter alia, constitutionality of the following words of article 1, paragraph 4 of the Decree №1 of the President of Georgia of 21 March 2020 on "Measures to be Implemented in connection with the Declaration of a State of Emergency throughout the Whole Territory of Georgia": "The Government of Georgia shall be given the right to determine by a decree ...". According to paragraph 1 of Article 4 of the Decree №1 of the President of Georgia of March 21, 2020, the Government of Georgia has been granted the authority to establish different rules for provision of public services and implementation of administrative proceedings, than defined by the current legislation of Georgia.

As mentioned, according to the established practice of the Constitutional Court, in order for a constitutional claim to be considered substantiated, a plaintiff is obliged to indicate any rule established by the disputed norm and request its declaration as unconstitutional. Within the constitutional claim №1503, the plaintiff considered it unconstitutional to confer certain powers on the Government, although the disputed words did not establish any powers of the

³ Minutes №3/7/1503 of the Constitutional Court of Georgia of May 20 of 2020 in the case "Tornike Artkmeladze v. The Parliament of Georgia, the President of Georgia and the Government of Georgia".

Government. The Constitutional Court noted that the provision - "to give the Government of Georgia the right to determine by a decree" - taken separately, did not constitute a normative rule, but was a grammatical unit (words) of the rule set forth in paragraph 4 of Article 1 of the Decree, and was acquiring essence only in conjunction with other words of given provision. In view of the above, the Constitutional Court held that appealed words did not have the normative content, disputed by the plaintiff and did not accept this part of the constitutional claim for consideration on the merits.

b) there is no substantive relationship between the disputed norm and the provision of the Constitution in relation to which the norm is declared unconstitutional

Another precondition for admissibility of a constitutional claim is that the plaintiff substantiates existence of a clear substantive interrelation between the impugned norm and the relevant constitutional right. The fundamental rights guaranteed by the Constitution differ significantly from the standpoint of protected sphere, the grounds for interference with the right, and other characteristics. For example, in relation to certain rights, the state has a wide margin of appreciation and broader scope of actions, while certain rights are of absolute character and their restriction is inadmissible. Such constitutional order creates the need for correct definition of the content and scope of each right. Correct definition and protection of fundamental rights will be complicated if the restriction of the right has not been assessed in relation to the relevant constitutional provision.

In this regard, great importance is attached to the plaintiff accurately presenting the restriction arising from the disputed norm, and identification of the relevant provision of the Constitution. Analysis of the practice of the Constitutional Court indicates, that misconstruction of the content and scope of constitutional rights by the plaintiffs still remains a problem.

For example, in the case "Tornike Artkmeladze v. the Parliament of Georgia, the President of Georgia and the Government of Georgia" (Constitutional claim №1503)⁴ the plaintiff was disputing, inter alia, a normative act of the Government of Georgia, according to which the movement of persons both on foot and by vehicle was prohibited during the emergency period from 21:00 to 06:00. According to the plaintiff, the mentioned regulation restricted the right to free personal development protected by Article 12 of the Constitution of Georgia.

⁴ Minutes №3/7/1503 of the Constitutional Court of Georgia of May 20 of 2020 in the case "Tornike Artkmeladze v. The Parliament of Georgia, the President of Georgia and the Government of Georgia".

According to the Constitutional Court of Georgia, free development of an individual is a universal right. The purpose of Article 12 of the Constitution of Georgia is not to leave unprotected those areas of life, that are not covered by specific rights of a person. In addition, if it is determined, that different components of the right to free personal development are protected by a special constitutional provision, the Constitutional Court of Georgia should assess constitutionality of the disputed norm not in relation to Article 12 of the Constitution of Georgia, but in relation to the relevant constitutional provision, which sets special constitutional-legal standards for protection of the specific legal component of given right.

The Constitutional Court of Georgia pointed out, that in the present case, the disputed norm was a part of the measures, taken by the state to reduce mobility of persons through imposition of restriction on movement both by foot, as well as by transport, within the period specified in the disputed norm (from 21:00 to 06:00). According to the Constitutional Court, the possibility for a person to move throughout Georgia at any time, to leave the country and to choose a place of residence according to his/her free will, is an important component of personal autonomy and self-determination. However, the named aspects of the free personal development are protected by a special norm of the Constitution of Georgia, in particular, Article 14, which establishes the right to freedom of movement. However, according to the Constitutional Court, the plaintiff failed to substantiate, that the disputed norm restricted any component of the constitutional right to free development of a person, beyond restriction of the freedom of movement. In view of the above, the Constitutional Court held that the plaintiff failed to demonstrate a substantive relation between the impugned norm and the right to free development of a person, enshrined in Article 12 of the Constitution of Georgia, and consequently, this part of the constitutional claim was rejected for consideration on the merits.

In the case of *Nikoloz Akofov v. the Parliament of Georgia* (Constitutional claim №1444)⁵ the plaintiff requested recognition of unconstitutionality of the second sentence of paragraph 1 of Article 77 and paragraph 2 of Article 79 of the Imprisonment Code, in relation to the first and second paragraphs of Article 15 of the Constitution of Georgia. The impugned norms defined the powers of the investigator and the prosecutor to restrict the rights of the accused to short-term visits, correspondence and/or telephone conversations.

According to the Constitutional Court of Georgia, the right protected by Article 15 of the Constitution has two structurally different aspects. The first paragraph of Article 15 protects the ability of a person to build his/her personal and family life, to choose with whom to communicate in the private sphere, and in general, to have the opportunity to make decisions

⁵ Minutes №2/3/1444 of the Constitutional Court of Georgia of April 29 of 2020 in the case of *Nikoloz Akofov v. the Parliament of Georgia*.

in the private sphere without interference from the State. The second aspect of the mentioned right concerns the possibility of a person to maintain secrecy of his private life from the state, and prohibits access to his/her personal communication, interference into personal life or exercising of control through any other means. The purpose of paragraph 2 of Article 15 of the Constitution of Georgia is not to protect a person's opportunity for personal communication, but to protect him/her from unlawful access to such communication. This provision of the Constitution of Georgia is a guarantee, that the state will not interfere with the personal space of persons.

In the case under consideration, the disputed norms established a restriction on a specific type of personal communication and not on the possibility of access to it by the state. Based on these norms, the prosecutor/investigator was empowered to restrict communication through correspondence and/or visitation rights of the accused. The challenged norms did not specify the scope of state access to the communication. Consequently, the Constitutional Court found that the impugned norms interfered with the first paragraph of Article 15 of the Constitution of Georgia and there was no substantive relationship between the impugned norms and the right protected by paragraph 2 of Article 15 of the Constitution of Georgia.

During the past year, several more problematic issues have emerged in substantiating the existence of substantive relationship between the disputed norms and the rights guaranteed by the Constitution, informing the public about which will help to better substantiate constitutional claims in the future. These are: a) possible consequences of restrictions of constitutional rights; b) appealing of the norms, which are of neutral content in regard to a circle of persons, in relation to the constitutional right to equality; c) appealing a disputed norm in relation to Article 34 of the Constitution of Georgia; d) substantiation of existence of a substantive relationship between the disputed norm and the right to a fair trial guaranteed by Article 31 of the Constitution of Georgia; e) appealing against the restriction of the substantive right to fair administrative proceedings and the right to a fair trial; and f) appealing a disputed norm for the purpose of establishing compliance with the formal requirements of the Constitution.

a) Possible consequences of restrictions of constitutional rights

In the court practice of the current year there have been several cases, where plaintiffs have requested an assessment of the constitutionality of the impugned norms in relation to the rights, that are impacted as a result of the restrictions arising from the impugned norm. In this regard, the case "Paata Diasamidze v. the Parliament and the Government of Georgia" is

noteworthy, in which, inter alia, was appealed paragraph 7 of Article 2 of the “Isolation and Quarantine Rules”, approved by the Resolution of the Government of Georgia № 322 of May 23 of 2020⁶. According to the disputed norm, taxi services were prohibited from transportation of more than 3 persons (including the driver). Also, the driver should be wearing a face mask and the passengers must be sitting on the back seat. The plaintiff was claiming, that such regulation restricted the right of free movement.

The Constitutional Court has clarified, that in some cases regulations or restrictions on the use of vehicles may impede freedom of movement, as the primary purpose of such transport is movement of persons from one point to another, although imposition of restrictions on vehicles does not mean, that they are directed towards restriction of the right of movement of a person, and in some cases, such result is the side effect of restricting of another constitutional right. In this case, based on the analysis of the disputed norm, the Constitutional Court concluded, that the purpose of the norm was to exclude movement of more than three persons by a vehicle and to reduce close contact between persons, which may have restricted, for example, full access to property, private life or any other constitutional right. According to the Constitutional Court, such regulation might as a side, effect, complicate inter alia, the movement of persons from one point to another, or cause the need of allocation of more resources for this purpose, however, this was not a sufficient basis for finding the restriction of the right of movement. In view of all the above, the Constitutional Court concluded, that in the present case, the impugned norm was not aimed at restricting the freedom of movement and the latter was only a concomitant side effect of possible restriction of other constitutional rights, due to which this part of the constitutional claim was not accepted for consideration on the merits.

b) Appealing of the norms, which are of neutral content in regard to a circle of persons, in relation to the constitutional right to equality;

According to the established practice of the Constitutional Court of Georgia, Article 11 of the Constitution of Georgia prohibits different treatment towards persons in substantially equal position, and vice versa. Accordingly, in order to demonstrate the unconstitutionality of the norm in relation to Article 11 of the Constitution, the plaintiff is obliged to prove, that the disputed norm puts a person in a different position compared to other essentially equal persons, or causes equal treatment of unequal persons.

⁶ Minutes №1/9/1505 of the Constitutional Court of Georgia of June 5 of 2020 in the case "Paata Diasamidze v. The Parliament of Georgia and the Government of Georgia".

In the case "Nino Zhvelia v. the Parliament of Georgia" (Constitutional claim №1534)⁷ was disputed the constitutionality of Article 11 of the Law of Georgia on Amnesty of December 28 of 2012, in relation to paragraph 1 of Article 11 of the Constitution of Georgia. According to the disputed norm, a person who has committed an offence stipulated by Article 180 of the Criminal Code, shall be exempt from criminal liability and punishment if all the victims or their legal successors expressed their consent to the investigation or court to apply amnesty to such person. According to the plaintiff, the disputed regulation was discriminatory in nature, as whether a particular person would be released from the criminal liability, depended on the goodwill of the victim (legal successor).

The Constitutional Court clarified that according to the disputed norm, amnesty applied to any person, if the subject provided by the norm consented to it. Accordingly, the benefit provided by the impugned norm. i.e. granting of amnesty to a particular person, depended not on his/her belonging to any particular group of persons, but on a specific action - the consent of the victim or his/her successor. In the absence of such consent, the amnesty would not be extended not only to the plaintiff, but also to any other person. Thus, the impugned norm provided for a uniform legal regime for implementation of actions of uniform legal significance, and did not single out any group of identifiable persons. In view of all the above, the Constitutional Court found, that the impugned norm was of a neutral nature and in the present case there was no differential treatment of persons.

c) Appealing a disputed norm in relation to paragraphs 2 and 3 of Article 34 of the Constitution of Georgia

According to the paragraph 2 of Article 34 of the Constitution of Georgia "The exercise of fundamental human rights shall not violate the rights of others", while paragraph 3 of the same article states, that "The restriction of a fundamental human right shall be commensurate with the significance of the legitimate aim that it serves".

According to the established practice of the Constitutional Court of Georgia, the named constitutional provisions do not constitute the norms establishing a fundamental right, but define the general constitutional principles. In particular, Paragraph 2 of Article 34 of the Constitution of Georgia defines the constitutional principle of achieving a fair balance between human rights, while paragraph 3 of the same Article declares the general principle of proportionality of the restriction of rights. Independently from the above-mentioned constitutional provisions, the guarantees provided by the mentioned principles, in themselves,

⁷ Judgment of the Constitutional Court of Georgia №2/20/1534 of December 11 of 2020 in the case "Nino Zhvelia v. The Parliament of Georgia".

derive from the separate rights defined by the second chapter of the Constitution. Thus, the Constitutional Court, in each case, assesses the impugned norm in relation to the provisions establishing the fundamental right set forth in Chapter 2 of the Constitution, in the context of the principles set out in paragraphs 2 and 3 of Article 34 of the Constitution.

Based on the above, the Constitutional Court does not make a constitutional-legal assessment of the disputed norm separately in relation to paragraphs 2 and 3 of Article 34 of the Constitution of Georgia, and requires substantiation of the restriction arising from the appealed rule in relation to the norms establishing fundamental rights. During the past year, the Constitutional Court did not accept for consideration on the merits constitutional claims №1534,⁸ №1472,⁹ and №1508¹⁰ which were filed on given grounds.

d) Appealing a norm which does not limit the right to applying to a court

According to the Constitutional Court of Georgia, the right to a fair trial includes, first of all, the possibility of appealing in court all the decisions (actions) of the state authorities, restricting the rights. At the same time, the Constitution not only recognizes and protects human rights and freedoms, but also defines their content and scope. Accordingly, a constitutional right exists even without its recognition by law, and it continues to exist and operate even when the grounds for the exercise of this right are not defined by law. According to the established practice of the Constitutional Court, the content and scope of the right to a fair trial are defined by the Constitution of Georgia and it can be exercised even without confirmation of the possibility of appeal by a legislative act. Nevertheless, there are frequent cases, when the plaintiff considers, that if the legislative act does not explicitly provide for the possibility of appealing in court, he/she cannot exercise this right and the right to a fair trial is restricted.

For example, in the case "Madona Dzidzishvili v. the Parliament of Georgia" (constitutional claim №1468)¹¹ the plaintiff disputed the constitutionality of paragraph 1 of Article 100 of the Criminal Procedure Code of Georgia. According to the impugned norm "when notified of the commission of an offence, an investigator, prosecutor shall be obliged to initiate an investigation. An investigator shall

⁸ Judgment of the Constitutional Court of Georgia №2/20/1534 of December 11 of 2020 in the case "Nino Zhvelia v. The Parliament of Georgia".

⁹ Minutes №1/4/1472 of the Constitutional Court of Georgia of April 30 of 2020 in the case of Nikoloz Lomidze v. The Parliament of Georgia.

¹⁰ Judgment of the Constitutional Court of Georgia №1/24/1508 of November 12 of 2020 in the case "Durmishkhan Gurgenedze v. The Parliament of Georgia".

¹¹ Judgment of the Constitutional Court of Georgia №2/13/1468 of December 11 of 2020 in the case "Madona Dzidzishvili v. the Parliament of Georgia".

immediately notify a prosecutor of the commencement of an investigation”. According to the plaintiff, the legislation did not provide for the possibility of appealing the decision of the prosecutor/investigator in case of failure of initiation of a criminal investigation. Consequently, there was no mechanism of judicial control over the obligation to initiate an investigation, thus violating the right of a possible victim to a fair trial.

The Constitutional Court of Georgia clarified, that paragraph 1 of Article 31 of the Constitution of Georgia provides for the possibility of applying to a court, regardless of whether there is a direct legislative provision on the possibility of appealing a restrictive act/decision taken by a governmental body. According to the Constitutional Court, in order to substantiate existence of a substantive relation to the right to appeal a restrictive measure protected by Article 31 of the Constitution of Georgia, the plaintiff was obliged to indicate such a restrictive normative act, which deprived him/her of the opportunity to apply to court for review of a restrictive measure. In the absence of such an act, a person had the opportunity, under the first paragraph of Article 31 of the Constitution of Georgia, to apply to a court to protect his rights and legitimate interests.

The Constitutional Court pointed out, that the disputed norm was limited to imposing an obligation on the prosecutor/investigator to launch an investigation, if he received information about commissioning of an offence. Consequently, the rule not only did not impose any prohibitions on appealing the decision of the prosecutor or investigator through the courts, but neither did it establish a procedural rule related to fair trial. The Constitutional Court further clarified, that the constitutional claim did not contain any evidence proving, that the common courts, on the basis of the impugned norm, refused to review the legality of the decision made by a prosecutor or investigator, to initiate an investigation. In view of all the above, the Constitutional Court of Georgia concluded, that the impugned norm did not limit the possibility of appealing of refusal to initiate an investigation in court, and in this respect, there was no substantive relationship between the impugned norm and the right to a fair trial guaranteed by paragraph 1 of Article 31 of the Constitution of Georgia.

e) Appeal against the restriction of substantive rights in relation to the right to fair administrative proceedings and a fair trial

According to the court practice of the Constitutional Court of Georgia, the right to a timely and fair hearing by an administrative body guaranteed by paragraph 1 of Article 18 of the Constitution of Georgia creates a procedural guarantee of protection of constitutional rights and/or legitimate interests within the framework of administrative proceedings. Similarly, the right to a fair trial protected by paragraph 1 of Article 31 of the Constitution of Georgia is

instrumental in nature, and its purpose is to ensure the possibility of effective protection of human rights and legitimate interests through the courts. The named constitutional provision strengthens the procedural right of a person to apply to a court to protect substantive rights established by the Constitution of Georgia and the legislation. Following from the above, the restriction of the rights protected by paragraph 1 of Article 18 and paragraph 1 of Article 31 of the Constitution of Georgia shall occur in case, when the disputed norm restricts the possibility of effective use of procedural mechanism of protection of rights and/or legitimate interests. According to the Constitutional Court of Georgia, the procedural guarantee strengthened by the named constitutional provisions does not include the right of a person to request creation of a substantive right or extension of its scope. It only indicates to the possibility of effective protection of existing rights and interests. Consequently, if the impugned norm is aimed at restricting and/or abolishing the substantive right or legitimate interest itself, then it does not represent restriction of a procedural mechanisms of the right, but implies regulation of the substantive content of that right itself, which cannot be assessed in relation to fair administrative proceedings and/or fair trial.

For example, in the case of "Zaur Shermazanashvili v. the President of Georgia and the Government of Georgia" (Constitutional claim №1502)¹² The plaintiff challenged, inter alia, constitutionality of the following words of Article 8 of the Presidential Decree №1 of the President of Georgia: "Violations of the regime of the state of emergency determined by this Decree shall result in the following liability: 1. administrative liability - a fine of GEL 3 000 for natural persons" – in relation to paragraph 1 of article 18 and paragraph 1 of Article 31 of the Constitution of Georgia. According to the plaintiff, the content of the prohibited actions, as well as liability for these actions, should have been provided by law, otherwise the right to a fair trial would have been violated.

The Constitutional Court clarified that the disputed norm defined liability for violation of the state of emergency. Imposition of liability on a person was related to restriction of specific substantive rights. Accordingly, the purpose of the challenged norm was not to establish the procedural order of consideration of a case by the administrative body and/or the court. In view of the above, the Constitutional Court considered, that the disputed norm had no relation to the rights protected by paragraph 1 of Article 18 and paragraph 1 of Article 31 of the Constitution of Georgia, and did not accept the constitutional claim in this part for consideration on the merits.

¹² Minutes №3/6/1502 of the Constitutional Court of Georgia of May 20 of 2020 in the case "Zaur Shermazanashvili v. the President of Georgia and the Government of Georgia".

f) Appealing of a disputed norm in terms of determining compliance with the formal requirements of the Constitution

On the example of cases considered this year, in the practice of the Constitutional Court of Georgia another problematic tendency was revealed in terms of substantiation of constitutional claims. In particular, in many cases, plaintiffs sought recognition of unconstitutionality of the impugned norms on the grounds, that they did not comply with the formal requirements of their Constitution, without provision of relevant arguments in their claim in support of restriction of the constitutional right itself.

For example, in the case of "Ltd. Leksika v. the Government of Georgia and the Parliament of Georgia" (Constitutional claim №1438)¹³ the plaintiff appealed against the constitutionality of Article 8, Paragraph 2 of the Law of Georgia on Revenue Service and the Resolution №96 of the Government of Georgia of March 30 of 2010 on the Approval of Fees and Rates for Services provided by the Revenue Service, in relation to Article 19 of the Constitution of Georgia. The disputed norms established, inter alia, the fees to be paid to the Revenue Service for provision of various types of services, the relevant rates, the procedure for payment of the fees and cases of exemption from them. According to the plaintiff, the mentioned fees were in essence fees, the structure and introduction of which, as well as determination of their rates, according to the formal requirements of the Constitution of Georgia, should have been regulated by law and not by a normative act of the government.

The Constitutional Court of Georgia has clarified that in order for a constitutional claim to be well-founded, a plaintiff is required to provide arguments regarding the restriction of the constitutional right, in regard to with which he/she requests recognition of unconstitutionality of the disputed norms. In view of the above, in order to litigate in regard to violation of the formal requirements established by the Constitution, it is first necessary for the plaintiff to identify the restriction of the right on the basis of the disputed norm. The Constitutional Court is authorized, on the basis of a person's claim, to recognize as unconstitutional only restrictive norms. A person may not request declaration of norms unconstitutional, which do not restrict his/her right, even if such norms are adopted in violation of the rules established by the Constitution.

The named constitutional claim, apart from alleging a violation of the formal requirements of the Constitution, did not present any arguments regarding the restriction of the plaintiff's property rights by the disputed norms. Accordingly, the Constitutional Court did not accept the constitutional claim for consideration on the merits.

¹³ Judgment of the Constitutional Court of Georgia №2/4/1438 of April 29 of 2020 in the case "Ltd. Leksika v. the Government of Georgia and the Parliament of Georgia".

1.1.2. Filing of a constitutional claim by an authorized subject

Subparagraph "b" of paragraph 1 of Article 31³ of the Organic Law of Georgia on the Constitutional Court of Georgia establishes the obligation of submission of a constitutional claim by an authorized subject. The same law defines the circle of subjects authorized for initiation of constitutional dispute in relation to the competencies of the Constitutional Court. In 2020, it became clear from the court practice, that correct identification of a subject authorized to submit a constitutional claim is related to several key challenges. The grounds for refusal to accept a constitutional claim submitted by an unauthorized entity, the circumstances and the legal grounds on which the court refused to accept the constitutional claims on the merits, are discussed in detail below.

a) the person does not fall within the scope of the disputed norm

In order for a natural and legal person to be considered as an authorized subject to file a constitutional claim, he/she is obliged to show that the validity of the disputed norm applies to him/her, or there is a real probability that the norm shall be applicable to him/her in future. The mere hypothetical assumption that the plaintiff may ever be subject to the rule is not sufficient to establish him/her as an authorized subject.

In the case of "NNLE Association of Professors v. the Parliament of Georgia"¹⁴ the plaintiff legal entity disputed the constitutionality of Article 11 of the Law of Georgia on Amnesty of December 28 of 2012. According to the plaintiff, the disputed norm allowed for the amnesty not to be extended to all convicts, thus violating the right to equality. The Constitutional Court of Georgia after analyzing the legislative norms, found that the disputed norm exempted from punishment a person, who had committed an offence, stipulated by Article 180 of the Criminal Code of Georgia. For its part, the legal entity was not criminally liable for the act committed under the mentioned article. Consequently, the legal entity was not falling, and could not in the future fall within the scope of the regulation of the disputed norm. Thus, the Constitutional Court indicating, that the disputed norm did not extend to the plaintiff, considered the association as an unauthorized subject to file a constitutional claim.

¹⁴ Judgment of the Constitutional Court of Georgia №2/19/1530 of 11 December 2020 in the case "NNLE Association of Professors v. the Parliament of Georgia".

Similar circumstances were identified in the case "Zurab Dgebuadze v. the Parliament of Georgia".¹⁵ The plaintiff disputed Article 2 of the Law of Georgia № 4562-Is of April 19 of 2011 on Amending the Law of Georgia on Recognition of Georgian Citizens as Victims of Political Repression and Social Protection of the Repressed. The impugned norm concerned persons, who had the right to be recognized as victims of political repression under the legislation in force before its enactment. The plaintiff considered himself a victim of political repression, as he was allegedly unlawfully dismissed from his post at the Ministry of the Interior in 2006 for his political views.

The Constitutional Court of Georgia clarified, that the Law of Georgia on "Recognition of Georgian Citizens as Victims of Political Repression and Social Protection of the Repressed" applied only to those, who had suffered political repression before the law came into force. Neither the interpretation of the law, nor the practice of its application in the case established, that the plaintiff fell within the scope of the impugned norm and had been subject to repressions before its adoption. Thus, according to the Constitutional Court of Georgia, the evidence presented in the case did not indicate, that the disputed norm applied to the plaintiff as well.

b) actio popularis

Pursuant to Article 39 (1) (a) of the Organic Law of Georgia on the Constitutional Court of Georgia, natural or legal persons, if they believe that their rights and freedoms recognized by the Constitution of Georgia have been violated, or may be directly violated, have the right to file a constitutional claim. Consequently, the Organic Law of Georgia on the Constitutional Court of Georgia does not provide for the right of a natural or a legal persons to file so-called "*Actio popularis*" claims. The plaintiff is entitled to dispute in regard to the normative acts in connection with direct violation of his/her rights. The possibility of applying to the court to protect the rights of other persons is provided only for specific subjects.¹⁶

In the case of "NNLE Union of Trade-Commercial Centers (Fairs) v. the Parliament of Georgia"¹⁷ the plaintiff disputed the regulation, which set out a number of financial reporting obligations for some entities engaged in economic activity. The plaintiff himself was a non-

¹⁵ Judgment of the Constitutional Court of Georgia №2/2/1283 of April 29 of 2020 in the case "Zurab Dgebuadze v. the Parliament of Georgia".

¹⁶ See. For example, Article 39, Paragraph 1, Subparagraph "b" of the Organic Law of Georgia on the Constitutional Court of Georgia.

¹⁷ Judgment №1/15/1469 of the Constitutional Court of Georgia of April 30 of 2020 in the case "NNLE" Union of Trade-Commercial Centers (Fairs) v. the Parliament of Georgia".

profit legal entity, that was not engaged in economic activity and whose main activity was not trade at all.

The Constitutional Court noted that the plaintiff's claim was related not to protection of his own interests, but those of other persons - its founding enterprises (fairs). According to the court, the plaintiff was not empowered to file a claim in the Constitutional Court in regard to violation of the rights of other persons, even if protection of the rights of these persons was the main purpose of the legal entity.

On the same grounds, the Constitutional Court did not recognize the plaintiff as an authorized person to file a constitutional claim in the case "Levan Akubardia v. the Parliament of Georgia".¹⁸ In this case, the plaintiff sought declaration as unconstitutional of the law, regulating full or partial immediate enforcement of the decision to recover the immovable property in illegal possession.

According to the Constitutional Court, it was possible to use the disputed procedural measure against a specific party in case of availability of a relevant court decision against such party. Based on the arguments provided in the claim, it was not clear that the plaintiff was a party to ongoing or future litigation, under which the measure of immediate enforcement of the disputed decision would be applied. At the same time, in the constitutional claim, the plaintiff referred to the decisions taken against other persons, to whom the disputed norm was applied. In view of all the above, the Constitutional Court indicated, that the plaintiff's aim was not to protect his own rights, but those of other persons, and in this respect, the Constitutional Court found the plaintiff an unauthorized subject.

c) The power of the plaintiff to apply to the court within the relevant competence

According to the legislation governing constitutional proceedings, natural and legal persons have the right to file a constitutional claim with the Constitutional Court of Georgia on the constitutionality of a normative act only in relation to the rights and freedoms recognized by Chapter Two of the Constitution. However, plaintiffs, who are natural and legal persons, often apply to the Constitutional Court with the request to declare the disputed norms unconstitutional in relation to the provisions of the Constitution, that are not included in the Chapter Two.

¹⁸ Judgment of the Constitutional Court of Georgia №1/3/1383 of April 30 of 2020 in the case "Levan Akubardia v. the Parliament of Georgia".

The case "Givi Gachechiladze v. the Parliament of Georgia" was related to this issue.¹⁹ In particular, the plaintiff requested recognition unconstitutionality of the disputed norm in relation to the first sentence of paragraph 3 of Article 59 of the Constitution of Georgia, while in the case "Ltd Champions v. the Parliament of Georgia"²⁰ the plaintiff considered that the disputed norm was unconstitutional in relation to Article 2, Paragraph 6 of the Constitutional Law of Georgia №1324-rs of 13 October 2017. In the mentioned cases, the plaintiffs demanded that the norm be declared unconstitutional in relation to the provisions of the Constitution, which are not included in the second chapter of the Constitution of Georgia.

The Constitutional Court of Georgia has reiterated, that natural and legal persons have the right to dispute the compliance of a normative act only with regard to the rights guaranteed by Chapter 2 of the Constitution of Georgia. The court clarified, that it has no jurisdiction to discuss constitutionality of disputed norms in relation to the constitutional provisions named in the claims of natural persons. Accordingly, the plaintiffs in these cases were considered as unauthorized to file a constitutional claim.

1.1.3. Jurisdiction of the Constitutional Court

Pursuant to Article 31³, Paragraph 1, Subparagraph "c" of the Organic Law of Georgia on the Constitutional Court of Georgia, a constitutional claim will not be considered, if none of the disputed issues posed in it are adjudicable by the Constitutional Court. Paragraph 4 of Article 60 of the Constitution of Georgia and Article 19 of the Organic Law of Georgia on the Constitutional Court of Georgia define the powers of the Constitutional Court. The Constitutional Court examines in each individual case, whether the claim falls within the scope of its jurisdiction.

According to the established practice of the Constitutional Court, a constitutional claim/submission will not be considered on the merits, unless the disputed issue is adjudicable by the Constitutional Court. For example, the constitutionality of an act of non-normative nature is disputed, or the normative act is invalid, the plaintiff's request is aimed at creating new normative content, the assessment of the issue goes beyond the authority of the Constitutional Court, and etc.

¹⁹ Judgment N2/5/1446 of the Constitutional Court of Georgia of April 29 of 2020 in the case "Givi Gachechiladze v. the Parliament of Georgia".

²⁰ Minutes №2/7/1465 of the Constitutional Court of Georgia of December 11 2020 in the case "Ltd. Champions 111 v. the Parliament of Georgia".

During 2020, the Constitutional Court in several cases refused to accept claims for consideration on the merits on the above grounds.

a) The Constitutional Court as a negative legislator

As in previous years, in the practice of the court during this year were again topical claims for modification of the disputed norms in accordance with the wording, preferred by the plaintiffs. In particular, in some cases, the plaintiffs sought to expand the scope of a particular provision by mechanically removing specific words from the impugned norm and thus formulating it in the form, that would ensure desired content.

According to the court practice of the Constitutional Court of Georgia, “the Constitutional Court is authorized only to repeal a disputed norm in its entirety and/or its part/normative content, although it cannot establish a new order, expand the scope of the disputed norm, and etc. Consequently, the decision of the Constitutional Court can only concern recognition of unconstitutionality of any normative content of a disputed norm, i.e. its repeal”.²¹ The Constitutional Court of Georgia, in its essence, “performs the function of a negative legislator, influences the law-making activity, and in case of satisfaction of a claim, the norm (norms) regulating specific relationship, loses legal force. Moreover, the legislator, in many cases, must adopt new norms, compliant with the Constitution, but it should be emphasized, that the function of the Constitutional Court is not to establish (create) a new order in the country, but ensure the supremacy and effectiveness of the Constitution, and promote its implementation by both the state and the people”.²² “The Constitution of Georgia does not empower the Constitutional Court to issue normative acts and adopt regulations. Its function is to ensure the constitutionality of the existing legislative framework.”²³

In the case of Ruslan Aleksidze v. the Parliament of Georgia²⁴ the plaintiff disputed the constitutionality of the words “State Scholarship” in Article 82, Paragraph 1, Subparagraph “b” of the Tax Code of Georgia in relation to paragraph 1 of Article 11 of the Constitution of Georgia. The plaintiff’s request concerned removal from the disputed norm, which established the regulatory rule of exemption from tax liability, of a specific word, as a result of which the

²¹ Judgment of the Constitutional Court of Georgia №3/6/642 of November 10 of 2017 in the case “Citizen of Georgia - Lali Lazarashvili v. the Parliament of Georgia”, II-22.

²² Judgment №1/466 of the Constitutional Court of Georgia of June 28 of 2010 in the case “the Public Defender of Georgia v. the Parliament of Georgia”, II-18.

²³ Judgment of the Constitutional Court of Georgia №3/6/642 of November 10 of 2017 in the case “Citizen of Georgia - Lali Lazarashvili v. the Parliament of Georgia”, II-20.

²⁴ Judgment of the Constitutional Court of Georgia №2/16/1492 of December 11 of 2020 in the case of Ruslan Aleksidze v. Parliament of Georgia.

scope of the rule allowing exceptions would expand and would allow to exempt from tax the income received in the form of non-state scholarships.

According to the Constitutional Court, in the present case the plaintiff sought, on the one hand, the annulment of the normative content of the disputed norm, which it did not imply, and, on the other hand, the expansion of its content by removing the word from the disputed norm. According to the Constitutional Court, both requirements were tantamount to creation of a positive provision in the legislation. Accordingly, the satisfaction of the plaintiff's request was beyond the competence of the Constitutional Court.

Constitutional claim №1456 had substantially the same problem. In particular, in the case "Vakhtang Barnabishvili v. the Parliament of Georgia"²⁵ was disputed constitutionality of Article 116 of the Law of Georgia on Civil Service in relation to the first paragraph of Article 11 of the Constitution of Georgia. According to the disputed norm, a female officer may not be dismissed during the period of pregnancy or the period of raising a child aged up to 3 years old due, to the reorganization and/or merger of the public institution with another public institution. In his claim to the Constitutional Court, the plaintiff sought to achieve application of the said provision to male civil servants as well.

The Constitutional Court pointed out that the impugned norm did not have such a normative content, recognition of unconstitutionality of which would have provided opportunity for prohibiting the illegal dismissal of male civil servants, and consequently, would have eliminated the problem named by the plaintiff. In this case, the abolition of any part/normative content of the disputed norm by the Constitutional Court of Georgia may have resulted only in reduction of the categories of persons, exercising the right defined by the disputed norm, and not vice versa. Accordingly, satisfaction of the plaintiff's claim and extension of the rights under the disputed norm to male civil servants required extension of the scope of the norm. Consequently, the Constitutional Court considered, that the plaintiff's claim was aimed at creating a new normative content and that assessment of the issue was beyond the scope of its authority. On this ground, the constitutional claim №1456 was not accepted for consideration on the merits.

b) the issue of compliance of the disputed act only with the Constitution

The Constitutional Court of Georgia is authorized to assess compliance of Georgian normative acts only with respect to the Constitution of Georgia. Consequently, a plaintiff

²⁵ Judgment of the Constitutional Court of Georgia №1/12/1456 of April 30 of 2020 in the case "Vakhtang Barnabishvili v. the Parliament of Georgia".

should file a claim only in regard to the fundamental rights and freedoms protected by the Constitution, otherwise, on the grounds of non-compliance with the requirements of jurisdiction, the court will not accept the constitutional claim for consideration on the merits.

In the case of "Sveti Development Ltd", "Sveti Group Ltd", "Sveti Ltd", "Sveti Nutsbidze Ltd", Givi Jibladze, Tornike Janelidze and Giorgi Kamladze v. the Government of Georgia and the Parliament of Georgia"²⁶ the plaintiffs argued that Article 180 of the Criminal Code of Georgia was contrary, inter alia, to Article 1 of the Strasbourg Protocol No.4 (of September 16, 1963) to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. The Constitutional Court of Georgia indicated, that in each case, "any issue must be resolved with the utmost respect for the requirements of international law, especially international human rights law, taking into account the rich international experience ...".²⁷ Notwithstanding the above, within the scope of competences defined by Article 60, Paragraph 4 of the Constitution of Georgia, and Article 19, Paragraph 1 of the Organic Law of Georgia on the Constitutional Court of Georgia, the Constitutional Court of Georgia is authorized to assess compatibility of Georgian normative acts only with respect to the Constitution. In view of the above, assessing of compliance of the disputed norm with the European Convention for the Protection of Human Rights and Fundamental Freedoms was not within the competence of the Constitutional Court of Georgia.

c) Constitutionality of an act of non-normative nature

In order for the Constitutional Court to discuss the constitutionality of an act, it is essential, that the act be of a normative nature. For the purposes of constitutional proceedings, the nature of a normative act is not limited only to the definition, provided by the Law of Georgia on Normative Acts. According to the Constitutional Court, the normative nature of an act should be identified taking into account the circle of addressees of the act and the object of regulation. "A normative act is of universal nature, it is aimed at an indefinite circle of persons, and remains such even in the case of identification of generic features of such circle".²⁸ „... The normative nature of a norm is manifested in the mandatory regulation of human conduct and

²⁶ Judgment of the Constitutional Court of Georgia №1/4/1416 of April 30 of 2020 in the case of "Sveti Development Ltd", "Sveti Group Ltd", "Sveti Ltd", "Sveti Nutsbidze Ltd", Givi Jibladze, Tornike Janelidze and Giorgi Kamladze v. the Parliament of Georgia."

²⁷ Minutes №2/6/465 of the Constitutional Court of Georgia of June 9 of 2009 on the case "Citizen of Georgia Paata Daborjginidze v. the Parliament of Georgia", II-8.

²⁸ Judgment №1/7/436 of November 9 of 2007 in the case of Caucasus Online Ltd v. Georgian National Communications Commission, II-5.

determination of the scope of such conduct. Accordingly, a legal provision is of a normative nature, if it establishes a binding rule of conduct, which imposes prohibitions on a particular person or a circle of persons, or conversely, permits certain actions. The binding nature of a legal norm serves the purpose of implementation of these functions and aims at establishing a new legal order through it²⁹.

As an example of incorrect assessment of the normative nature of a disputed norm by plaintiffs may serve the case of "Archil Fulariani v. Baghdati Municipal Council".³⁰ In given case, the plaintiff disputed constitutionality of Resolution №32 of the Baghdati Municipality, which approved the acceptance of 688 land plots of households residing in Baghdati, and instructed the Land Reform Commission to register them in a special journal. The same act also established the need to postpone the hearing in order to further verify the acts related to a certain group of persons.

According to the Constitutional Court, by the disputed resolution was adopted a decision on finding valid 688 acceptance acts and their registration, as well as postponement of the sitting. Accordingly, the impugned act did not constitute a normative rule governing some relationship, but was a decision reached on the transfer of specific land plots to specific persons. Thus, the impugned act was not designated to be applied to other similar relationships. The validity of this Resolution was limited to a one-time, individual decision in regard to a specific legal relationship. Consequently, the disputed resolution could not be considered as a normative act for the purposes of the constitutional proceedings.

Thus, the Constitutional Court found that the disputed issue was not adjudicable by the Constitutional Court and did not accept №1431 constitutional claim for consideration on the merits.

1.1.4. All disputed issues referred to in the constitutional claim or the constitutional submission have already been decided by the Constitutional Court

Pursuant to Article 31³ (d) of the Organic Law of Georgia on the Constitutional Court of Georgia "a constitutional claim or constitutional submission shall not be considered if all the disputed issues mentioned therein have already been decided by the Constitutional Court, except in the cases provided for in Article 21¹ of this Law."

²⁹ Judgment of the Constitutional Court of Georgia №1/494 of December 28 of 2010 in the case "Citizen of Georgia Vladimer Vakhania v. the Parliament of Georgia", II-10.

³⁰ Judgment of the Constitutional Court of Georgia N1/7/1431 of April 30 of 2020 in the case "Archil Fulariani v. Baghdati Municipal Council".

The named legislative norm serves the purpose of reduction of time spent on cases and equips the Constitutional Court with the power not to consider issues, that have already been decided by the Constitutional Court. At the same time, the norm allows for the review of the court practice in cases, provided for in Article 21¹ of the Organic Law of Georgia on the Constitutional Court of Georgia, if the panel, or a member of the panel of the Constitutional Court considers, that his opinion, based on the case to be considered, dissents from a legal opinion expressed by the court in its earlier decision (decisions), the case may be referred to the Plenum of the Constitutional Court of Georgia.

In the case of "Nikoloz Adamia v. the Parliament of Georgia" (Constitutional claim №1445)³¹ the plaintiff disputed the constitutionality of paragraph 3 of Article 5 of the Law of Georgia on Assemblies and Demonstrations, inter alia, in relation to the right to assembly guaranteed by paragraph 1 of Article 21 of the Constitution of Georgia. Under the impugned norm, persons under the age of 18 cannot not be persons responsible for organizing and holding assemblies or demonstrations. The plaintiff considered it unconstitutional to prohibit minors between the ages of 14 and 18 from being responsible for organizing assembly and demonstration.

According to the Constitutional Court of Georgia, constitutionality of the disputed norm has already been assessed by the Constitutional Court of Georgia in its decision №2/2/180-183 of 5 November of 2002 in the case of Georgian Young Lawyers Association and Zaal Tkeshelashvili, Nino Tkeshelashvili, Maia Sharikadze, Nino Basishvili, Vera Basishvili and Lela Gurashvili v. the Parliament of Georgia." In this decision, the Constitutional Court assessed the constitutionality of the ban on the right of organization of assemblies and demonstrations by underage persons and concluded, that the disputed regulation is in compliance with the Constitution. Thus, the issue raised in №1445 constitutional claim, in the mentioned part of the claim, had already been decided by the Constitutional Court of Georgia. In addition, the Constitutional Court published the legal position expressed in the decision №2/2 /180-183 of November 5 of 2002, due to which given part of the constitutional claim №1445 was not accepted for consideration on the merits.

1.1.5. Subsidiarity

Pursuant to Article 31³, Paragraph 1, Subparagraph "g" of the Organic Law of Georgia on the Constitutional Court of Georgia, a constitutional claim will not be considered if “the

³¹ Judgment of the Constitutional Court of Georgia №1/10/1445 of April 30 of 2020 in the case of "Nikoloz Adamia v. the Parliament of Georgia".

constitutionality of the disputed normative act cannot be duly considered without discussing the constitutionality of the normative act, which in the hierarchy of normative acts is superior to the said act, and which is not appealed by the constitutional claim." The Constitutional Court will accept a constitutional claim on the merits only if it finds that a thorough discussion of constitutionality of the disputed norm is possible without assessing the constitutionality of the superior normative act.

In the case of Tekla Davituliani v. the Government of Georgia (Constitutional claim №1496)³² the plaintiff challenged the constitutionality of the first sentence of paragraph 2 of Article 5 of a normative act "On the Approval of Measures to be Implemented in connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia", approved by Ordinance №181 of the Government of Georgia of March 23 of 2020. The plaintiff considered the ban on the gathering of more than 3 individuals as unconstitutional with regard to the right to free development of a person.

According to the Constitutional Court, for the period of the state of emergency, any kind of assemblies, demonstrations and gatherings of people was prohibited by Article 6, Paragraph 1 of the Decree №1 of the President of Georgia of March 21 of 2020, "On Measures to be taken throughout the territory of Georgia in regard to declaration of the state of emergency." Accordingly, a superior normative act contained similar provision, as the one appealed by the plaintiff, which was not disputed by him. According to the Constitutional Court, it was impossible to comprehensively discuss constitutionality of this restriction established by a subordinated normative act without discussing the constitutionality of a normative act superior to it, i.e. paragraph 1 of Article 6 of the Presidential Decree №1 of March 21 of 2020. In view of the abovementioned, the constitutional claim was not accepted in this part of the claim for consideration on the merits.

1.2. Norms, which override adopted decisions

Noe Korsava and Giorgi Gamgebeli v. the Parliament of Georgia

On June 4 of 2020, the First Panel of the Constitutional Court of Georgia passed a ruling in the case "Noe Korsava and Giorgi Gamgebeli v. the Parliament of Georgia" (Constitutional

³² Judgment of the Constitutional Court of Georgia №2/8/1496 of April 29 of 2020 in the case "Tekla Davituliani v. the Government of Georgia".

claims №1265 and №1318)³³ and repealed the normative content of the words "punishable by imprisonment for a term of five to eight years" in paragraph 3 of Article 260 of the Criminal Code of Georgia, which provided for the possibility of imposition of imprisonment as a punishment for illegal purchase and storage of drugs in unusable quantities.

The plaintiff pointed out that in regard to some drugs were not established small amounts, and amounts serving as basis for imposition of criminal liability, due to which their any amount, including not a particularly large amount, would qualify as a large amount, regardless of whether it was usable or not. Consequently, the impugned norm provided for imprisonment as a punishment, including for purchase and possession of an unusable amount of drugs. According to the plaintiffs, the purchase and possession of an unusable amount of drugs was not an act, that would pose threat to public, which would justify the use of imprisonment as punishment. Accordingly, the impugned regulation was contrary to the constitutional provision prohibiting the use of inhuman punishment. At the same time, the plaintiffs considered, that the disputed norm had identical content as the norm, which was recognized unconstitutional by the decision of the Constitutional Court of Georgia №1/8/696 of July 13 of 2017³⁴, and demanded its annulment without consideration of the case on the merits.

According to the position of the respondent, the decision №1/8/696 of the Constitutional Court of Georgia of July 13 of 2017 was applied only to a specific type and specific amount of a drug - 0.00009 g. of Desomorphine. Assessing the dangers of purchasing and storing of all other drugs, as well as determining the unsuitable amounts of these drugs, required a hearing on the merits. In view of the above, the disputed norm should not have been considered as a norm overriding the above-mentioned decision of the Constitutional Court of Georgia.

The Constitutional Court of Georgia clarified, that the decision №1/8/696 of July 13 of 2017 established a general standard, according to which the use of imprisonment as a punishment for production, purchasing and possession of an unusable amount of illicit drugs was a clearly a disproportionate measure and therefore, was contrary to the constitutional provision, aimed at prohibition of unhuman punishment. In the present case, the court, based on the analysis of the Georgian legislation, found that within the scope of regulation of the said norm fell any amounts of drugs (except for particularly large amounts of drugs), in regard to which small amounts, and amounts serving as basis for imposition of criminal liability were not established. Consequently, the impugned regulation, similarly to the norm, recognized unconstitutional by

³³ Judgment of the Constitutional Court of Georgia №1/19/1265,1318 of June 4 of 2020 in the case "Noe Korsava and Giorgi Gamgebeli v. the Parliament of Georgia".

³⁴ Judgment of the Constitutional Court of Georgia №1/8/696 July 13 of 2017 in the case "Citizen of Georgia Lasha Bakhutashvili v. the Parliament of Georgia".

Decision №1/8/696, provided for the possibility of imposition of imprisonment as a punishment, including for purchase and possession of unusable amounts of drugs.

The Constitutional Court of Georgia drew attention to the fact, that under Georgian law, the amount of a mixture was determined by calculating the substance subject to special control, for the illegal circulation of which (in the prescribed amount) was envisaged a stricter punishment. Under such a legislative arrangement, it was possible to have a mixture in which the amount of the key substance (the substance by which the action would be qualified) was independently unusable, but in combination with other substances subject to special control, it could have caused narcotic effect and the mixture would have been usable. In view of the above, the Court pointed out that, that unsuitability of the amount of a specific drug should have been determined as a result of an individual assessment of the circumstances of a particular case by common courts. In each particular case, the prosecution and the trial court (with the assistance of a qualified specialist) should assess whether a specific drug/drug mixture was a usable amount.

The Constitutional Court of Georgia has held that the purchase or storage of an unsuitable amount of a drug did not pose an additional risk, that would not have occurred during the manufacture, purchase and storage of an unusable amount of desomorphine. The unconstitutionality of the disputed norm was preconditioned not by the type of a drug, but by the amount unsuitable for use. The sanction imposed by the disputed regulation, like the norm recognized unconstitutional, served only the purpose of general prevention, which could not be a sufficient basis for stipulating imprisonment as a punishment.

However, the First Panel of the Constitutional Court shared the position expressed in the decision №1/8/696 of July 13 of 2017 and found, that there was no need to change court practice. In view of all the above, the plaintiff's claim was granted and the impugned norm was declared invalid without a hearing of the case on the merits.

Giorgi Gotsiridze v. the Parliament of Georgia

On December 11 of 2020 the Second Panel of the Constitutional Court of Georgia ruled in the case of Giorgi Gotsiridze v. the Parliament of Georgia (Constitutional claim №1476).³⁵ The disputed norm established administrative-legal responsibility for distorting the appearance of Tbilisi Municipality, in particular, for placing posters, slogans, banners in places that are not allocated for that.

³⁵ Judgment of the Constitutional Court of Georgia №2/14/1476 of December 11 of 2020 in the case "Giorgi Gotsiridze v. the Parliament of Georgia".

The plaintiff considered unconstitutional the normative content of the disputed norm, which excluded the possibility of temporary placement of posters, slogans and banners in Tbilisi municipality by the owner, or with the consent of the owner, for a short period of time, in such places, which were not designated for this. The plaintiff was arguing, that the mentioned norm had the identical content, as the norm, recognized as unconstitutional by the decision of the Constitutional Court of Georgia №1/5/1271 of July 4 of 2019³⁶, and requested to declare it invalid without consideration of the merits of the claim.

According to the plaintiff, the decision №1/5/1271 assessed the balance between the interest of avoiding distortion of the image of the self-governing unit on the one hand, and ensuring freedom of expression on the other hand, which is equally relevant in regard to any self-governing unit, including Tbilisi Municipality. The plaintiff considered, that the geographical scope of the norm could not be considered as a circumstance, which would create a precondition for re-evaluation of the norm in the format of substantive hearing.

The respondent, a representative of the Parliament of Georgia, stated that he upheld the constitutional standard of freedom of expression established by the Constitutional Court of Georgia, while the disputed norm established an identical restriction, as the norm, which was recognized unconstitutional, and had the same legal consequences. Accordingly, the respondent party recognized №1476 constitutional claim.

The Constitutional Court of Georgia pointed out, that according to the general standard, set by the decision №1/5/1271 of July 4 of 2019, despite the importance of the legitimate interest in maintaining the appearance of the municipality, timeliness and urgency are often crucial when expressing opinions on current events, and delays and obstacles in relation to expressing a protest may reduce its effectiveness. Thus, the Court held that in a democratic society, such an intensive restriction on freedom of expression could not be counterbalanced by the interest of prevention of a short-term, temporary alterations to the appearance of a particular building.

The Constitutional Court clarified, that the impugned norm literally repeated the content of the invalid norm and regulated a substantially identical legal relationship. The only difference was the fact, that the norm, which was recognized unconstitutional, established administrative-legal responsibility for distorting appearance of a self-governing unit, while the disputed norm in the case under consideration applied to the same action on the territory of Tbilisi municipality.

³⁶ Judgment of the Constitutional Court of Georgia №1/5/1271 of July 4 of 2019 in the case "Besik Katamadze, Davit Mzhavanadze and Ilia Malazonia v. the Parliament of Georgia".

The Constitutional Court found, that in particular cases the geographical location of specific buildings may necessitate application of a different legal regime, although in the present case were not identified any additional interests, that should have been taken into account when assessing implementation of the same action in Tbilisi Municipality. Thus, the legitimate aims pursued by the impugned norm, the means used to achieve the aim, and the legal outcome were essentially identical. Accordingly, the Constitutional Court noted, that the existing difference did not call for a review of the substance of the impugned norm in the substantive hearing format.

Based on the above, the Constitutional Court of Georgia ruled, that the disputed norm was reiterating the content of the norm, found unconstitutional by the decision of the Constitutional Court of Georgia №1/5/1271 of July 4 of 2019, and declared the content of the disputed norm invalid without hearing on the merits.

1.3. Decisions

1.3.1. *Plenum*

The Public Defender of Georgia v. the Parliament of Georgia

On July 30 of 2020, the Plenum of the Constitutional Court of Georgia ruled in the case of the Public Defender of Georgia v. the Parliament of Georgia (Constitutional claims №1459 and №1491). The case was disputed under Article 34¹ of the Organic Law of Georgia on Common Courts, which defined the procedure for selecting candidates for the position of a judge of the Supreme Court of Georgia by the High Council of Justice of Georgia.

According to the arguments of the Public Defender of Georgia, the legislation did not provide for the requirement of substantiation of the decisions of the High Council of Justice of Georgia on nomination of judges of the Supreme Court of Georgia to the Parliament. At the same time, due to adoption of decisions through a secret ballot procedure, at various stages of the selection of candidates the High Council of Justice was not constrained by criteria such as integrity and competence of a candidate. The plaintiff explained, that only the court, established and staffed on the basis of the relevant procedures stipulated by the Constitution has constitutional legitimacy. The disputed norms, which did not preclude partial and unreasonable conducting of the selection process, called into question the constitutional legitimacy of the staffing of the court. Consequently, the plaintiff argued, that the rule

established by the disputed norms failed to ensure selection of the best candidates, which was contrary to the constitutionally guaranteed rights to holding public office and a fair trial.

According to the respondent, the selection of candidates by the High Council of Justice of Georgia was not a competition, and differed from the selection process of judges of the first and second instances. The role of the High Council of Justice of Georgia in this process was limited to nominating candidates to the Parliament, which did not imply rejection of other persons (candidates), and the final decision on the election of a person as a judge was reached by the Parliament of Georgia. Thus, the respondent considered, that selection of a person to the position of a judge of the Supreme Court of Georgia did not fall within the field protected by the right to hold public office. At the same time, the respondent pointed out that the High Council of Justice of Georgia was obligated by the criteria of integrity and competence at all stages of decision-making. However, despite the secrecy of the vote, it was entirely possible to identify the factual preconditions underlying the Council's decision, while secrecy was aimed at protecting each member of the Council from external influences. In view of all the above, the respondent considered that the disputed regulations should have been considered in accordance with the Constitution of Georgia.

The Constitutional Court assessed the issue of applying the standards set forth in Article 25(1) of the Constitution of Georgia to the position of a judge of the Supreme Court of Georgia. The Court clarified that the standards set for the selection procedure of judges of the first and appellate instances could not be fully relevant and identical in relation to the judges of the Supreme Court, as the essence of the position to be occupied was different, as well as the constitutional bodies authorized to appoint judges at different levels of the judiciary and the role of these bodies. According to the decision of the Constitutional Court, the power to select and appoint members of the Supreme Court was shared by the High Council of Justice (the judiciary) and the representative political power (Parliament), and the final decision was made by the political authorities. In exercising this power, the discretion of the High Council of Justice of Georgia was limited to nominating to the legislature the appropriate candidates to be elected, leaving Parliament with the final decision-making power. By the instruction of the Court, the process of selection judges of the Supreme Court of Georgia, despite the existence of the nomination stage by the High Council of Justice of Georgia, was characterized by elements of elective positions.

According to the Constitutional Court, when making a decision, the Parliament, as well as the members of the High Council of Justice, were bound by the constitutional requirement - the candidate be selected based on good faith and competence criteria. Furthermore, the court shared the position of the defendant and pointed out that the participation of the two

constitutional bodies in the process of selection and appointment of judges of the Supreme Court of Georgia, their functions, purpose, status, in combination, ensured staffing of the Supreme Court in accordance with the requirements of the Constitution-with conscientious judges having appropriate competence.

The Constitutional Court also pointed out that according to the Constitution of Georgia, only the High Council of Justice of Georgia was competent to nominate the appropriate candidates for the position of a judge, and the decision made by it was legitimate based on the legal guarantees of the staffing procedure and activities of this body. Thus, a model where a decision made by the board was determined by a vote of the board members and did not require additional written justification did not call into question the quality and credibility of the decision made. Accordingly, the High Council of Justice did not violate the right protected by the first sentence of Article 25(1) of the Constitution of Georgia when selecting candidates for judges of the Supreme Court without written justification.

However, the Court clarified that the right to hold public office was also not violated by the rule of secrecy of decision-making, as the secrecy of the vote mainly served to enable an objective and fair decision, ensuring the protection of the decision-maker.

In assessing the constitutionality of the issue of giving preference to a candidate with more work experience at the stage of selection of candidates for the Supreme Court of Georgia by the High Council of Justice, the court clarified that long experience of the person of work in the specialty was a qualitative determinant and objective criterion of his/her qualification. Thus, in case of an equal distribution of votes in the High Council of Justice, giving preference to a person with longer working experience was not an inappropriate criterion and/or a criterion that contradicted the criteria of competence and good faith.

In view of all the above, insofar as the impugned norms ensured the composition of the Supreme Court in accordance with the standards established by the Constitution of Georgia, the Constitutional Court considered that there was no violation of the right to a fair trial of all other persons and these norms were considered to be consistent with the Constitution.

The dissenting opinion of the Judges of the Constitutional Court of Georgia - Teimuraz Tughushi, Irine Imerlishvili, Giorgi Kverenchkhiladze and Tamaz Tsabutashvili regarding Decision №3/1/1459,1491 of July 30, 2020 of the Plenum of the Constitutional Court of Georgia

The dissenting opinion, first of all, explains the model of appointing judges to the Supreme Court established by the Constitution of Georgia, which implies the evaluation and support of a person by an apolitical judicial body as well as a political body, where Parliament complements the professional decision made by the Council and assigns democratic legitimacy

to it. In addition, the Constitution sets out certain qualification requirements for judges, including good faith and competence. Thus, the will of the Constitution is unequivocal that in the process of selecting judges, decisions based on expediency characteristic of the political process should be minimized. The power to make decisions without justification, in the opinion of the authors of the dissenting opinion, was in fact equal to that made based on its expediency, desire (in this case, the desire of the members of the High Council of Justice). Such a possibility was granted by the Constitution to the political power only on the condition of direct control by the people.

According to the reasoning in the dissenting opinion, due to the lack of constitutional mechanisms for the control of the activities of the High Council of Justice, the principle of democracy requires it to make important state decisions based on law and not on expediency. It is a requirement of Article 25 of the Constitution to establish a system for the selection of judges of the Supreme Court, within which the Council will have an adequate opportunity to assess the good faith and competence of candidates, so as to exclude arbitrary decision-making by the Council.

Based on the analysis of the relevant norms of the Organic Law of Georgia “On Common Courts”, the authors of the dissenting opinion considered that the first stage of the selection process did not allow council members to evaluate candidates adequately and objectively and did not even consider the minimum elements of the requirement of justification. However, the subsequent stages of selection established by the impugned norms were not aimed at making a reasoned decision, could not preclude the granting of artificial advantages or privileges to candidates, could not provide them with equal opportunities and disregard the constitutional guarantee for a person to receive a proper explanation for refusal of appointment. In addition, according to the authors of the dissenting opinion, the secrecy of the vote further reduced the transparency of the decisions made by the members of the Council and the degree of their accountability. As for the appealed rule, according to which out of candidates with equal results, the candidate with more work experience is preferred, without considering the qualitative component of this experience, was an inappropriate criterion in the selection process of judicial candidates.

Finally, according to the dissenting opinion, the system established by the impugned norms completely disregarded the principle of accountability of those exercising power in a democratic state and violated the human right to hold the position of a judge of the Supreme Court.

In addition to the above, the authors of the dissenting opinion considered that the decision №3/1/1459,1491 made by the Constitutional Court on July 30, 2020 was fundamentally

contrary to the standards firmly established by the Constitutional Court and did not share its spirit.

In assessing the right to a fair trial in the impugned norms, the author of the dissenting opinion explained that the personal and professional characteristics of the judges directly exercising judicial power are crucial for the practical realization of this right. Thus, the procedure for selecting judges of the Supreme Court was to ensure the appointment of qualified, conscientious judges in accordance with the requirements of the Constitution, and to build public confidence in the process. The stages of selection of judges, according to the authors of the dissenting opinion, did not meet the above-mentioned constitutional requirements, in particular, it did not allow for a full evaluation of the candidate for a judge and thus the council was deprived of the opportunity to make a thoughtful decision based on the criteria. Moreover, the procedure did not provide a mechanism for substantiating the decision made by the council at each stage, which, in the absence of a connection between the candidates' results of their secret vote and their evaluation scores, made the logic of the decision completely incomprehensible.

Nikanor Melia v. the Parliament of Georgia

On September 25, 2020, the Plenum of the Constitutional Court of Georgia rejected Constitutional claim №1473 ("Nikanor Melia v. Parliament of Georgia"). Resolution №5544-Ilb of the Parliament of Georgia of December 12, 2019 "On the early termination of the term of office of a member of the Parliament of Georgia for Nikanor Melia" was challenged in the named case. The ruling of the Tbilisi City Court of December 2, 2019, which found Nikanor Melia guilty of abuse of office, was the basis for the mentioned decision.

The plaintiff pointed out that the term of office of the Member of Parliament could be terminated prematurely only when there was a final guilty verdict of the court, and a judgment that was final and no longer subject to direct appeal and change in a superior court would be considered final. The plaintiff explained that the court of the first instance might have made mistakes in assessing the facts and made the wrong decision. To avoid this risk, there was an appeal mechanism, however, it would have lost its point if a person had been irreversibly harmed by the judgment of the court of the first instance. Accordingly, the plaintiff considered that the early termination of the term of office of the Member of Parliament based on the decision of the Court of the first instance was contrary to the requirements of the Constitution of Georgia and contained a risk of irreversible violation of a person's rights.

The defendant explained that the issue of the entry into force of the judgment of the court of the first instance was related to its enforcement. If the entry of the judgment into force had

been delayed until the appeal mechanism in the case had been exhausted, the judgment could not have been enforced and the sentence passed by the court could not have been imposed on the person, which would ultimately hinder the administration of justice in the case. Therefore, the defendant considered that for the purposes of terminating the powers of a Member of Parliament, the decision of the Court of the first instance should have been considered as having entered into force and, in this regard, the disputed decision did not violate the requirements of the Constitution of Georgia.

The Constitutional Court of Georgia, first of all, assessed whether the disputed decision caused termination of the term of office of a Member of Parliament for the purposes of Article 39(5) of the Constitution of Georgia. According to the Constitutional Court, only the measure in which the loss of the status of a Member of Parliament is permanent/long-term and the law does not provide for its restoration without repealing the termination order, is considered to be termination of the term of office of a Member of Parliament. The Constitutional Court noted that after recognition of the authority of Nikanor Melia's successor, the legislation of Georgia no longer provided for the possibility of restoring a parliamentary mandate to a plaintiff, even though the higher court found him innocent, which constituted of the term of a Member of Parliament for the purposes of the Georgian Constitution.

At the next stage, the Constitutional Court clarified the content of Article 39(5) of the Constitution of Georgia regarding the procedure and grounds for termination of powers of a Member of Parliament. According to the Court, improper termination of the powers of a Member of Parliament posed the greatest risks of irreversible violation of a person's rights and suppression of the will of the people. That is why Article 39(5) of the Constitution of Georgia exclusively and exhaustively listed the grounds, the existence of which led to the early termination of the term of office of a Member of Parliament, and this list was not subject to expansion by subordinate legislative acts. Furthermore, Article 39(5)(d) of the Constitution of Georgia considered recognizing a person guilty by the judgement that has entered into force as one of the grounds for termination of powers of a Member of Parliament, but the definition of any given crime in the Criminal Code did not automatically indicate that termination of a person's authority was permissible for committing a particular act, just as it was not excluded that there were actions beyond the Criminal Code, which should have resulted in early termination of a parliamentary mandate. In view of the above, the Constitutional Court held that the abuse of office constituted a crime which was incompatible with the status of a Member of Parliament.

The Constitutional Court also discussed the extent to which the guilty verdict of the first instance court could be considered legally binding and serve as a basis for the termination of

power of a Member of Parliament. According to the Court, the activities of those persons in the Parliament who were found guilty by the court of the first instance with a guilty verdict rendered "beyond a reasonable doubt", damaged the reputation of the legislature and called into question its credibility. However, according to the court, the existence of a guilty verdict deprived the people of their trust in the Member of Parliament and the mandate granted to him/her. The Constitutional Court also stressed the relationship between the entry into force of a judgment and its enforcement, and pointed out that if the judgment of the first instance was not enforced against a Member of Parliament, not only the effective functioning of the Parliament but also the administration of justice would be jeopardized.

Thus, the Constitutional Court concluded that early termination of powers of a member of Parliament for Nikanor Melia based on a guilty verdict of the Court of the first instance did not contradict Article 39(5)(d) of the Constitution of Georgia.

Dissenting Opinion of the Judges of the Constitutional Court of Georgia - Teimuraz Tughushi, Irine Imerlishvili, Giorgi Kverenchkhiladze and Tamaz Tsabutashvili with regard to Decision №3/2/1473 of September 25, 2020 of the Plenum of the Constitutional Court of Georgia

The authors of the dissenting opinion did not share the opinion of the Plenum of the Constitutional Court that the announcement of the verdict of the Court of the first instance constitutes its entry into force and may be the basis for the termination of the term of office of a Member of Parliament. According to them, in a criminal case there is a constant risk of misjudgment of facts, making mistakes and making wrong decisions. The negative consequences of realizing this risk are most visible in the termination of the term of office of a member of the Parliament of Georgia as a person directly elected, which irrevocably violates not only the rights of the person, but also the interests of voters and threatens the effective functioning of the Parliament. Thus, in the view of the authors of the dissenting opinion, the interference of this intensity in the rights of the Member of the Parliament should be exercised with particular caution.

Judges drew parallels with the presumption of innocence, when discussing the entry into force of the judgment, pointing out that the term "judgment entered into force" has a similar meaning and purpose in relation to both the presumption of innocence and the termination of powers of a Member of the Parliament. In particular, in both cases, the Constitution of Georgia aims to protect a person from irreversible violation of the right until the decision on finding

him/her guilty becomes final (the mechanisms for direct appeal of the decision are not exhausted).

The authors of the dissenting opinion also drew attention to the fact that termination of the term of office of a Member of Parliament is not a direct result of a guilty verdict and this issue should be discussed independently by the Parliament of Georgia. That is, termination of the mandate is not a punishment, but a side effect of a person being found guilty. Thus, according to them, the opinion of the Plenum of the Constitutional Court on the interrelationship between the administration of justice and the termination of the powers of a Member of Parliament is wrong.

According to the authors of the dissenting opinion, the status of a Member of the Parliament may be lost only after the final decision of the court on the case, as termination of the mandate is permanent/long-term and the law does not provide for the possibility of its restoring without repealing the resolution of termination, and irreversible damage occurs for the interests of the Member of Parliament/his/her voters.

In view of all the above, by the dissenting opinion the authors consider that Resolution №5544-Іb of the Parliament of Georgia of December 12, 2019 on “Early termination of the term of office of a member of the Parliament of Georgia for Nikanor Melia” contradicts the requirements of Article 39(5)(d) of the Constitution of Georgia, in so far as Nikanor Melia's authority was terminated on the basis of a judgment of the Court of the first instance, in conditions when the plaintiff had not exhausted the mechanism for appealing the judgment and this judgment was not considered to have entered into force for the purposes of the Constitution of Georgia.

Non-entrepreneurial (non-commercial) legal entity citizens' political union “New Political Center”, Herman Sabo, Zurab Girchi Japaridze and Ana Chikovani v. Parliament of Georgia

On September 25, 2020, the Plenum of the Constitutional Court of Georgia made a decision in a case in which the impugned norm for electoral subjects stipulated the obligation to compile a party list to participate in the parliamentary elections to be held before the October 26, 2024 parliamentary elections in such a way that at least one person in every four on the list was the representative of the opposite sex. Otherwise, the party list would not have been registered.

According to the constitutional claim, the plaintiff political union developed a system based on which the formation of a party list for participation in the elections depends entirely on the will expressed by the party partners. The impugned norm obliged the plaintiff, with the motive of maintaining the balance between the sexes, to make changes in the party list determined by

the party partners. According to the plaintiff, imposing such an obligation unjustifiably restricted their right to vote. Moreover, the political party was forced to ignore the decision made by its own partners, which negatively affected the issue of party financing by the partners and, consequently, posed a significant threat to the full-fledged functioning of the political union.

The defendant explained that the restriction of the right to vote was conditioned by the fundamental right established by Article 11(3) of the Constitution of Georgia, based on which the state had a positive obligation to take special measures to ensure substantive equality between women and men. In the present case, the legitimate aim of the impugned norm was to improve the balance between the sexes in the supreme legislative body.

The Constitutional Court found, that imposition of mandatory regulations on the possibility of freely determining the party list for participation in elections leads to the restriction of the right of voters to vote. The Court first assessed the compatibility of the restriction imposed by the impugned norm with the principle of democratic governance and clarified that quotas based on sex are not linked to the promotion of any particular idea and/or policy. Furthermore, quotas are made among those who are more or less equal in the number of people with the right to vote and it does not lead to a disproportionate increase in the representation of any group in the Parliament of Georgia. Thus, as a result of the validity of the impugned norm, the influence of the state on the choice of citizens is minimal, therefore, it cannot be considered as a restriction incompatible with the principle of democracy.

Afterwards, the Constitutional Court assessed the compliance of the impugned norm in relation to the requirements of the principle of proportionality. The Court noted that even under conditions of equal opportunity for individuals and equal legal regulation, it is possible that certain groups, due to artificial barriers created by the action of the social environment, could not realize the opportunities equally to others. The positive obligation of the state stipulated by Article 11(3) of the Constitution of Georgia is directed against such social-political inequality beyond law and the promotion of equal realization of opportunities. This provision equips the state only with the authority to take special measures based on real need. It calls on the state to take special measures through creating compensational mechanisms for artificial public barriers hindering success due to gender. According to the Constitutional Court, the purpose of this provision is to create conditions conducive to de facto equality and not to artificially ensure equality.

The Constitutional Court, based on the analysis of the ratio of women's representation in the legislature in the conditions of independent Georgia, held that their low representation could not be attributed solely to natural factors, but is due to circumstances, existing in the

society that hinder participation of women in politics. In particular, stereotypes firmly established in Georgia reinforce the argument for unhealthy, artificial barriers to women's participation in politics and ultimately create an unequal environment for women, including in terms of political participation. Based on the above, the Constitutional Court considered the increase of women's representation in the Parliament as a legitimate goal deriving from Article 11(3) of the Constitution of Georgia, which can be achieved by restricting the right to vote.

In considering the usefulness of the restrictions, the court separately considered the obligation to nominate at least one male candidate in every four parties on the party list, noting that there is logical explanation as to why a fully or mostly female constituency is restricted when the representation of women in the Parliament is(was) significantly lower than the number of men and, simultaneously, there is no rational expectation of creating a need for quotas in favor of men in the Parliament in the near future. Consequently, such regulation prevents the increase of women's representation in the Parliament of Georgia. Thus, the requirement established by the impugned norm, according to which there should be at least one man in each four in the voter lists, was declared unconstitutional in relation to the first sentence of Article 24(1) of the Constitution of Georgia.

Regarding the normative content of the impugned norm, which obliges election subjects to have at least one female candidate in every four on the party list, the court pointed out that the impugned measure is one of the most effective mechanisms for achieving results in a short period of time and guarantees the representation of women in the Parliament, at least in a certain percentage. In this regard, the Constitutional Court has drawn attention to the fact that it is fundamentally incorrect to compare members of the Georgian Parliament with persons of different professions. According to the Court, unlike professional positions or other professional activities, where better management and successful results are directly related to the selection of people with the best knowledge and experience for this position, the Parliament of Georgia is staffed in full accordance with the will of the people as a sovereign, and the proper performance of the activities of a member of Parliament is not related to the special skills that typically characterize men. Thus, according to the court, the mandatory quotas established by the disputed regulation, in contrast to the areas of professional activity, will not prevent the successful implementation of the activities of the Parliament. In addition, the Court took into account the temporary nature of the impugned norm, as well as the fact that the freedom of electoral subjects is restricted to a minimum not only by imposing less quantitative demands on members of the opposite sex, but also by the nature of the regulation itself. In particular, the restriction is aimed not at selecting candidates based on any particular characteristics, but at the requirement (sex), which by its nature is one of the most easily

overcome barriers. Based on the above, the court considered that the impugned norm rightly establishes a balance between private and public interests and the obligation to include at least one woman in every four on the electoral list does not contradict the first sentence of Article 24(1) of the Constitution of Georgia.

Dissenting opinion of Eva Gotsiridze, Member of the Constitutional Court of Georgia regarding Decision №3/3/1526 of September 25, 2020 of the Constitutional Court of Georgia

The author of the dissenting opinion pointed out that a fair value balance could not be established by the court decision. However, there was no factual, legal, or logical basis for declaring the impugned norm and any of its "normative content" unconstitutional.

According to the author of the dissenting opinion, the impugned norm really served the legitimate interest of achieving gender equality in the respective legal relationship. Furthermore, the purpose of the norm is to help the oppressed sex in legal relations and not specifically a woman or a man, which is directly in line with the principles set out in Article 11(3) of the Constitution. It is noteworthy that it is in this provision that the Constitutional Court has rightly asserted the special positive obligations of the state with regard to ensuring equality between women and men.

According to the author of the dissenting opinion, the impugned norm achieves the legitimate aim with minimal interference with the right to vote, since it requires the inclusion of only one representative of the opposite sex in every four on the list. Consequently, beyond this restriction, the parties have considerable freedom to form a party list according to their preferences.

The author of the dissenting opinion believes that the court made a mistake in deciding the constitutionality of the beneficial quotas for men. In its view, the main purpose of the disputed regulation is to have more or less equal representation of women and men in the Parliament. Consequently, the imposition of equal quotas for both women and men does not contradict the idea of equality, but also expresses it most directly and clearly. Furthermore, Article 11(3) of the Constitution of Georgia refers to the essential equality of women and men in the Parliament, and not directly to the increase of women's representation. Consequently, if the legitimate aim is not to increase the number of women in the Parliament directly, but to eliminate inequality, then it would be difficult to say that quoting men does not serve a legitimate purpose and there is no reasonable and rational connection between them. The Constitutional Court considered the legitimate goals of ensuring the essential equality of women and men and increasing the representation of women in the Parliament to be

incompatible with each other, which led to the wrong resolution of the issue. Increasing the representation of women, on the other hand, helps to ensure a balance between the sexes.

According to the author of the dissenting opinion, the normative reality created by the court decision contain considerable risks. The court rendered the content-neutral regulation a discriminatory nature by recognizing men quotas as unconstitutional and thus itself interfered with the right to equality. Moreover, the Constitutional Court, in fact, allowed only the existence of women's parties, while denying the existence of men's parties. Giving such priority to women is a threat both in terms of gender equality and in terms of increasing the quality of democracy in general, and it cannot be easily justified by the legitimate aim of increasing women's representation in the Parliament.

The author of the dissenting opinion notes that by such a decision the Constitutional Court, in fact, performed the role of the positive legislator.

The author of the dissenting opinion also considers that the normative content declared unconstitutional by the court cannot be considered as the normative content of the impugned norm which it really had. In its view, the impugned norm has only one normative content, which implies mandatory quotas of both sexes in the party lists. Consequently, it is the "quota of both sexes" that creates one normative reality, which is why the plenum of the Constitutional Court must either recognize the impugned norm as completely constitutional or must consider it completely unconstitutional.

According to the author of the dissenting opinion, the court also created a new dilemma by deciding the dispute in such a way. In particular, it ruled out the possibility of men arguing in the Constitutional Court over the constitutionality of discrimination on the grounds of sex.

Dissenting opinion of the Judges of the Constitutional Court of Georgia - Irine Imerlishvili and Teimuraz Tughushi regarding paragraph 2 of the Resolution Part of Decision №3/3/1526 of September 25, 2020 of the Plenum of the Constitutional Court of Georgia

The authors of the dissenting opinion point out that the disputed rule, which obliges the citizens of Georgia to elect a certain number of women members of Parliament in the Parliament of Georgia, is aimed at restricting freedom of choice of the citizens of Georgia and not at promoting it. The impugned norm establishes an order that is alien to the electoral process based on freedom of choice, and thus the impugned norm imposes severe restriction on this right.

The authors of the dissenting opinion do not deny that there is a significantly lower level of their representation in the Parliament of Georgia compared to the number of women in the society. However, this in itself does not mean that such factual reality is mostly due to

unhealthy attitudes or stereotypical attitudes towards women in society. According to the authors of the dissenting opinion, even in such a situation, Article 11(3) of the Constitution does not create the basis for application of the special measure defined by the impugned norm (aimed at ensuring equal starting conditions for women and men by removing social barriers and not equalizing their results), since it is directly result-oriented. Accordingly, the impugned norm goes beyond the scope of authority conferred on the state by Article 11(3) of the Constitution of Georgia and there is no legitimate basis for its validity.

The authors of the dissenting opinion, while discussing the usefulness of the restriction, noted that the Constitutional Court has not thoroughly investigated the effectiveness of the mandatory quotas in neutralizing stereotypes in society. In their view, such a regulation, on the contrary, might contribute to the strengthening of unhealthy attitudes towards the role of women, since the artificial determination of the number of women MPs creates a risk of raising public opinion about them getting their positions undeservedly. Furthermore, the representation of women provided by the impugned norm, even in its absence, was almost achieved as a result of the 2016 parliamentary elections. Consequently, the impugned regulation does not change the expected reality on the improvement of women's representation in the Parliament of Georgia, which is why it cannot be considered as a useful means of achieving a legitimate goal.

Discussing the stage of necessity, the authors of the dissenting opinion noted that the results of 2008-2016 parliamentary elections indicate a growing number of women in the Parliament of Georgia. In particular, women's representation in the Parliament as a whole has increased from 6% to 12% in the last three parliamentary elections, and then to 16%. However, in the proportional system part it increased from 10.66% to 14.29% and then to 23.38%. In 2016, the representation of women in the Parliament, as well as in the part of the members of Parliament elected by the proportional system, increased twice or more and in fact, the representation of women provided by the impugned norm was almost achieved. In this situation, the Court's assertion that the dynamics of increasing the representation of women in the Parliament of Georgia under natural conditions is insufficient, is unfounded. Thus, the authors of the dissenting opinion held that there was no need to impose a restriction under the impugned norm and that it did not constitute the least restrictive means of entitlement.

The authors of the dissenting opinion, when discussing the issue of narrow proportionality, noted that representative democracy implies that the policy-making decisions of the country are made by those individuals who are elected with the most support based on the free will of the electorate, and that any artificial interference should be ruled out. Consequently, like in case of a professional position, trusting making the most important decisions for the country

to a person with no appropriate support and, thus, insufficient legitimacy, is no less dangerous. Also noteworthy is the fact that the controversial measure was introduced four months before the Parliamentary elections. Consequently, the political parties were not given a reasonable time to take care in advance to popularize the appropriate number of women candidates and to properly increase their support. Furthermore, those political parties that had naturally high female representation found themselves in an advantageous position over other political parties that did not have a sufficient number of female candidates with appropriate political ratings. In view of the above, the authors of the dissenting opinion consider that the obligation to include at least one woman in every four on the electoral list is contrary to the right to vote protected by the first sentence of Article 24(1) of the Constitution of Georgia.

Levan Meskhi, Nestan Kirtadze, Tamaz Bolkvadze and others (50 plaintiffs in total) v. Parliament of Georgia

On December 29, 2020, the Constitutional Court of Georgia made a decision in the case “Levan Meskhi, Nestan Kirtadze, Tamaz Bolkvadze and others (50 plaintiffs in total) v. the Parliament of Georgia” (Constitutional claims №648, 1315, 1369, 1370, 1371, 1372, 1373, 1374, 1375, 1379, 1385, 1386, 1388, 1391, 1397, 1398, 1405, 1406, 1407, 1411, 1413, 1414, 1415).³⁷ The norms of the Law of Georgia “On State Compensation and State Academic Scholarship” were disputed in the case, which set the upper limit of compensation in the amount of GEL560 for a certain category of individuals receiving state compensation and prior to the introduction of the impugned norms, the defined compensation was subject to a new calculation rule, which involved setting an upper limit of compensation in the amount of GEL 560.

The plaintiffs were former members of the Parliament, whose compensation before the impugned norm was GEL 750, which was reduced by GEL 190 based on the impugned norm. According to the plaintiffs, the reduction of compensation was contrary to their right to property. The plaintiffs alleged that the state compensation had a "dual" purpose and served to assess a person's length of service and special service to the country, as well as to provide social security for those who have given up their professional activities to engage and actively participate in the political life important for the country. By reducing the compensation, the state neglected these goals. However, it was unclear to the plaintiff what legitimate purpose the reduction of the compensation of former Member of Parliament served, provided that the

³⁷ Decision №3/4/648, 1315, 1369, 1370, 1371, 1372, 1373, 1374, 1375, 1379, 1385, 1386, 1388, 1391, 1397, 1398, 1405, 1406, 1407, 1411, 1413, 1414, 1415 of December 29, 2020 of the Constitutional Court of Georgia in the case “Levan Meskhi, Nestan Kirtadze, Tamaz Bolkvadze and others (total of 50 plaintiffs) v. the Parliament of Georgia”.

reduction in the amount of compensation did not lead to a significant increase in the amount of social benefit for other types of beneficiaries.

According to the defendant, the public legitimate aim of the impugned norms was the sustainability of the state budget, the rationalization of state expenditures, the provision of social justice, the protection of state economic welfare, and the establishment of a balanced and sustainable welfare system. Furthermore, the state had a wide range of discretions in the implementation of social and economic policies. According to the defendant, the fact that the disputed legislative change was not isolated and was part of a wider legislative reform of the pension system was also to be considered. However, the maximum amount of compensation established was fair, as it was 2.8 times higher than the usual social pension. Accordingly, under the impugned norms, the property rights of the plaintiffs were proportionally restricted.

The Constitutional Court noted, that Article 19 of the Constitution of Georgia is not limited to the traditional sense of property and includes the right to receive economic benefits based on legitimate expectations. The degree of protection of legitimate expectations created by law, in different cases, may differ significantly from one another. Thus, in each case, it must be assessed in the light of the nature of the interest/benefit and the scope of the legal regulation.

The Constitutional Court has distinguished the categories of legal relations, where the interference by the state in the unimpeded use of property rights will be strongly assessed by the court. In particular, in cases when a person performs an action in favor of the state on the condition of receiving a future benefit and the obligation to fulfill the said condition deserves legitimate protection, or when the state, within the framework of its will, enters into a contractual relationship with specific persons who have desire and willingness to receive property benefits as a result of fulfilling the established preconditions, as the said relationship is substantially similar to the contractual relationship. Contrary to the named cases, when the state issues property benefits based on goodwill, without expecting the recipients to take counter-action, the court will not find a violation of property rights if the action of the state is based on reasonable grounds.

The Constitutional Court noted, that the plaintiffs had a legitimate expectation that their pension would not be reduced without a reduction in the salary of active members of Parliament. The salary of the active member of Parliament was increased, in contrast to the above, with the introduction of the impugned norms, the legislature reduced the amount of compensation for plaintiffs. Thus, the impugned norm established a restriction on property rights.

The Constitutional Court pointed out that the payment of a pension/compensation to a Member of the Parliament was not a reactive action characteristic of the contractual

relationship for the benefits received by the State, as the membership of the Parliament is not inherently an activity within which the state, taking into account the shortage of qualified personnel or other factors, may establish incentive mechanisms for holding positions and carrying out activities, in contrast to other public positions (for example, soldier, police officer). In the present case, allocating compensation by the state served to respect the special role of the Member of Parliament and not to fulfill the social obligations assumed by the state in exchange for his/her service. Accordingly, the state compensation provided for the former members of Parliament by the disputed law was a social guarantee based on goodwill created by the state within the framework of social policy.

The Constitutional Court upheld the defendant's argument and held that the imposition of the upper limit of compensation was aimed at achieving significant public interests, to create a balanced and socially just pension system. Furthermore, in the present case, there was no reduction in the property interest of the plaintiffs as defined by law, which would in fact equate to a substantial exhaustion of such interest and would impose on the plaintiffs an individual and excessively heavy burden. The court pointed out that the amount of the state compensation established by the disputed law for former members of Parliament was significantly higher than the usual social pension.

In view of all the above, the Constitutional Court found that in the present case, reduction of the pension/compensation of the former members of Parliament was based on reasonable grounds and did not contradict the requirements of the first and second paragraphs of Article 19 of the Constitution of Georgia.

1.3.2. First Panel

Nana Sepashvili and Ia Rekhviashvili v. Parliament of Georgia and Minister of Justice of Georgia

On June 4, 2020, the Constitutional Court of Georgia adopted a decision on the case “Nana Sepashvili and Ia Rekhviashvili v. Parliament of Georgia and Minister of Justice of Georgia” (Constitutional claim №1404). The plaintiffs disputed the rules governing the issuance of ID cards, which did not allow the issuance/receipt of the mentioned document in the electronic form, without the electronic media of information (so-called "chip").

The plaintiffs pointed out that the electronic ID card allows for total control over people and is related to the biblical prophecy about the apocalypse. Accordingly, they refused to accept such documents based on Article 16 of the Constitution due to their beliefs. In addition,

according to the plaintiff, the impugned norms, without objective grounds, established differential treatment for persons who have not been subject to legislative change and who still use termless non-electronic ID cards, which is contrary to the right to equality.

According to the defendant, the need to introduce an electronic ID card was based on several reasons. On the one hand, the state had a legitimate interest in issuing a document for security purposes that would protect it as much as possible from fraud. This purpose was ensured by an electronic component (chip) integrated in the ID card. On the other hand, to ensure the quality of official documents, including ID cards, it was necessary for them to exist in a unified form. However, the adoption of other, alternative rules for issuing ID cards would be related to problems of a legislative and practical nature. With regard to the right to equality, the defendant noted that the impugned norms established a uniform rule for the issuance of electronic ID cards, thus not differentiating between persons.

The Constitutional Court of Georgia clarified that the plaintiffs' refusal to obtain an electronic ID card was a declaration of their religious beliefs and was based on their sincere religious views. Accordingly, such religious opposition was treated within the framework of the protection of freedom of belief/religion guaranteed by Article 16(1) of the Constitution of Georgia.

According to the Constitutional Court, the impugned norms did not, in the first place, interfere with the applicants' freedom of religion. The disputed regulation was neutral in nature, and by establishing a single option rule for issuing an electronic ID card, it applied equally to all persons, regardless of their beliefs. However, the impugned rule did not impose any kind of prohibition or restriction, which meant interfering with the freedom of expression of one's faith in one form or another. For its part, a side effect derived from substantively neutral norms could not be a self-sufficient basis for proving interference with freedom of belief.

The Constitutional Court, after clarifying the issue of possible interference with the freedom of religion by the impugned norms, assessed the damage caused to the plaintiffs' freedom of religion in terms of the positive obligations of the state. In this regard, the court faced the question of whether the state was obliged to take exceptions to the impugned neutral norm in order to avoid side effects.

The Constitutional Court found, that under the single option rule of issuing an electronic identity card, plaintiffs were left without an identity card for the sake of protecting their belief, which resulted in their exclusion from many components of social life in the form of side effects. However, according to the Court, to the detriment of the important public and individual interests of the uniformity of official administrative documents, the state had no

obligation to make exceptions from the general, substantively neutral regulation. Accordingly, the Court considered such a balance to be reasonable and fair within the framework of the interrelation of individual and public interests.

When discussing the right to equality, the Constitutional Court noted that the impugned norms were neutral in nature and established a uniform legal regime for all persons wishing to obtain an identity card. Under the current regulation, any person, including members of the group identified by the plaintiffs, would receive an electronic ID card upon renewal of their ID card. Accordingly, under the new regulation, all persons, including holders of termless non-electronic ID cards, were not in a different, but identical legal status when it came to obtaining an ID card.

In view of all the above, the Constitutional Court held that the impugned norms did not contradict the equal rights of all in the face of belief and justice guaranteed by Article 16 and Article 11(1) of the Constitution of Georgia.

“LLC Bekanasi” v. Parliament of Georgia

On November 12, 2020, the First Panel of the Constitutional Court of Georgia made a decision in the case of “LLC Bekanasi” v. Parliament of Georgia (Constitutional claim №1475).

In the present case, the plaintiff disputed the provision of the Code of Administrative Offenses of Georgia, which provided for the confiscation of the instrumentalities of offence as one of the types of sanctions for the use of entrails without a proper license.

№1475 constitutional claim states that the plaintiff was declared an administrative offender due to the use of entrails without a proper license, and the confiscation of the instrumentalities of offence - a tractor was defined as an administrative penalty. According to the plaintiff, the impugned norm, in the form of a sanction, provided for the unconditional confiscation of the instrumentalities of offence and deprived the judge hearing the case of the possibility of individualization of the administrative sanction. According to the plaintiff, the judge hearing the case was deprived of the opportunity, in each individual case, through adequate balancing of private and public interests, to determine the need for confiscation of the instrumentalities of offence, which unjustifiably restricted the right to property enshrined in Article 19(1) and (2) of the Constitution of Georgia.

According to the defendant-the representative of the Parliament of Georgia, the development of the impugned norm was due to the frequent cases of extraction of minerals without proper license and the ineffectiveness of financial sanctions, served the public legitimate

purpose of environmental protection and rational use of natural resources and, in this respect, it did not contradict the constitutional right to property.

The Constitutional Court of Georgia, first of all, clarified that the instrumentalities of an administrative offense owned by an administrative offender belong to the category of property to which the scope protected by Article 19 of the Constitution of Georgia applies. Subsequently, the Constitutional Court of Georgia pointed out that by transferring the instrumentalities of offense to the state free of charge against the will of the owner, the owner loses the opportunity to own, use and dispose of the object, which is a restriction of the constitutional right to property. However, the Court shared the position of the defendant, and considered the protection of the natural environment and the rational use of natural resources as a valuable public good protected at the constitutional level and found that the restriction provided for in the disputed regulation has in itself a restraining effect on the commission of the offense and is logically related to a legitimate public purpose.

Discussing the necessity of the disputed restriction, the Constitutional Court of Georgia pointed out that the forced seizure of a person's property free of charge is the most severe form of restriction of property rights. Consequently, the seizure of the instrumentalities of offense particularly increases the need to justify the advantage of public need and to establish a fair and proportional balance between conflicting interests. In resolving this issue, it is necessary to consider such circumstances as the gravity of the administrative offense, the nature and extent of the damage to the environment, the identity and personal characteristics of the offender, as well as other individual characteristics, the combination of which may necessitate the use of the measure provided for in the impugned norm or the refusal of the court to use it.

The Constitutional Court of Georgia has indicated that, in each individual case, without weighing the conflicting interests, it will be impossible to determine whether it is necessary and justified to seize the subject of an administrative offense with respect to all possible cases of entrails use without proper license. In contrast, the Court pointed out that the impugned norm did not provide for the possibility of individualizing the administrative sanction, in so far as it defined the confiscation of the instrumentalities of offense as a mandatory and automatic measure. As a result, it restricted the constitutional right to property of the owner of instrumentalities of an administrative offense more than was objectively necessary to protect the legitimate public interest in the natural environment and rational use of the natural resources.

In view of the above, the Constitutional Court of Georgia, in relation to the first and second paragraphs of Article 19 of the Constitution of Georgia, considered unconstitutional and invalid the normative content of the impugned norm, which provided for the mandatory confiscation of the instrumentalities of offense as a sanction for the offense provided for in Article 57¹ of the

Code of Administrative Offenses of Georgia - for the use of entrails without a proper license, as a form of a sanction, provided for the mandatory confiscation of the instrumentalities of offense and excluded the possibility of individualization of the same sanction by the administrative court hearing the case.

Konstantine Gamsakhurdia v. the Parliament of Georgia

On December 18, 2020, the First Panel of the Constitutional Court of Georgia made a decision in the case of Konstantine Gamsakhurdia v. the Parliament of Georgia (Constitutional claim № 1312).

The impugned norm of the Criminal Procedure Code of Georgia established the right of the victim to receive information about the progress of the investigation and to familiarize with the materials of the criminal case, if it did not contradict the interests of the investigation. According to the plaintiff, the Criminal Procedure Code of Georgia provided the victim with only the right to familiarize with the materials of the criminal case and did not provide for the possibility of transferring copies of these materials.

According to the plaintiff, the right of access to information or an official document established by the Constitution of Georgia, inter alia, implies the right to receive copies of documents protected in a public institution. The plaintiff stated that the transfer of case materials served to enable the effective protection of the interests of the victim in order to exercise effective control over the activities of the investigative bodies and, if necessary, to appeal the relevant investigative action. However, in so far as the precondition for disclosing information in criminal proceedings is to avoid harming the interests of the investigation, the argumentation of prohibiting access to the case materials related to the victim was vague for the plaintiff.

The defendant clarified that access to information and documentation on the investigation in the state investigative bodies was indeed a matter protected by Article 18(2) of the Constitution of Georgia, although obtaining copies of criminal case materials was not a requirement of this constitutional provision. According to the defendant, the risk of obstructing the investigation in case of transfer of materials increases, in particular, making copies and granting the right of material access to them would cause significant damage not only to the state but also the process of combating crime and the interests of the parties to the proceedings.

The Constitutional Court considers that the purpose of this constitutional provision is not only to read information, but also to create a mechanism that will allow a person to properly

study information, examine its accuracy, analyze, draw conclusions, disseminate and/or use it for various legitimate purposes. According to the court, the increase in the diversity of the information spectrum, along with the different needs and interests of individuals, requires the development of appropriate tools for familiarization with it, however, what the information disclosure tool should be depends on the form and content of information and not the needs of the person requesting it. In this case, the interest in the victim's investigation materials is motivated by important legitimate goals, which necessitates effective access to it. The Court held that the right of access to the information provided for in that Article of the Constitution implied the possibility of effective access to such information, which, if necessary, might also include the receipt of a document containing such information as a copy.

According to the Constitutional Court, the possibility of accessing criminal materials only on the spot and even making written records manually could not always provide for the interested person an effective, complete access to information or an official document on him/her available in a public institution. Thus, the impugned norm restricted the sphere protected by the freedom of information of the person.

The Constitutional Court shared the position of the defendant and noted that the legitimate aim of the impugned norm was to protect the interests of the investigation. However, the Court noted that if access to the case file is not contrary to the interests of the investigation, it does not rule out the possibility that access to the same material by the general public would be detrimental to the investigation. Of course, the victim may disseminate the information he/she received as a result of familiarization with it, however, disseminating materials in the form of copies, poses the risk of presenting a complete picture of the investigation. Consequently, the ban on making copies of the case file reduced the risks mentioned, thus making it a useful means of achieving a legitimate aim.

The Constitutional Court clarified, that the victim is the person most interested in conducting the investigation properly and, consequently, in accessing the information. At the same time, the information contained in the case file may differ significantly from each other and, consequently, the need to protect the interest of the investigation may be different in each particular case. Thus, between the interests of protecting the interests of the investigation and ensuring access to information about a person in a public institution, there may be a need to balance them individually. In contrast, the impugned norm established a blanket restriction on the receipt of information contained in a public institution as a copy, without an assessment of individual circumstances.

In addition, the Court noted that it is true that the development of specific mechanisms is at the discretion of the legislature, however, it considered possible to develop a mechanism by

law that would ensure that all legitimate interests involved are adequately and properly considered in the relevant decision-making process. Finally, the Constitutional Court found that the impugned norm restricted the right of access to information available to public institutions to a greater extent than was necessary to achieve the legitimate aim of the investigation and was therefore contrary to the right guaranteed by Article 18(2) of the Constitution of Georgia.

Fatman Kvaratskhelia and Kakha Ekhvaia v. the Parliament of Georgia

On December 18, 2020, the First Panel of the Constitutional Court of Georgia made a decision in the case of Fatman Kvaratskhelia and Kakha Ekhvaia v. Parliament of Georgia (Constitutional claim № 1380). The norms disputed in the case by the plaintiffs set as means for securing a claim under loan/credit agreement to be issued/issued to individuals (including individual entrepreneurs) prohibition of use of mortgage in relation to immovable property owned by the individual or other individual and liens for items of certain categories.

The plaintiff stated that the disputed restriction made an unjustified differentiation between natural and legal persons, and the differentiation could not have a legitimate aim, since in case of non-payment of the loan, natural and legal persons were in identical danger of losing property. The plaintiff, on the other hand, held that the impugned norms restricted the owner's ability to dispose of the property he/she owned at his/her own discretion and the freedom of will inherent in civil relations. In view of the above, the plaintiff considered that the impugned norms contradicted the right to equality and the right to property guaranteed by the Constitution of Georgia.

The defendant explained that the purpose of the disputed regulation was to protect the rights of consumers and reduce the risks of excessive loans, which, in turn, was directly related to maintaining financial stability. However, according to the defendant, the restriction was due to the need for legal protection of the borrowers from the abuse of the situation by the creditor. According to the defendant, the activities of the individuals issuing loans increased the named risks, as the amount of the loan issued by the individuals, the interest rate were not controlled, and the solvency of the borrowing individual was not properly analyzed. At the same time, the defendant justified the differentiated treatment between individuals and legal entities, since a legal entity is usually created for multiple economic gain and, in the field of credit, has much more experience and high awareness than a natural person.

The Constitutional Court of Georgia stated, that prevention of excessive loans and protection of consumer rights are linked to important public interests, such as economic

robustness, maintaining the purchasing power of the public, and massive accumulation of loans by individuals may affect the country's financial stability and cause crisis in the credit sphere. Thus, the Constitutional Court has held that maintaining financial stability by regulating debt-related relationships is a particularly valuable asset that can be protected by restricting property rights.

Moreover, the Constitutional Court has clarified that creditors which operate in the market, for the most part, enjoy the balance of asymmetric forces inherent to their position, driven not only by their respective experience, but also by an increased interest in obtaining high benefits from legal relationships. Accordingly, the Court noted that it is necessary to have mechanisms in place to balance the threat posed by such creditors.

The Constitutional Court, in view of their specificity and the risks involved, has distinguished between the use of mortgages on immovable property and the use of liens in respect of certain categories of movable property. The court noted that loans secured by real estate are, as a rule, typical of credit relations, which are linked to taking a particularly large amount of credit obligations. Consequently, repaying such a loan to the creditor can impose such a high burden on the person that it significantly reduces his/her purchasing power and significantly impairs his/her ability to make full use of the resources at his/her disposal.

According to the Constitutional Court, due to the high frequency of the above-mentioned negative consequences, not only the individual but also the public effect of the norm should be considered, as a number of public interests are at stake. In view of all the above, the Court considers that the impugned norm rightly establishes balance between private and public interests and the restriction of the circle of individuals issuing loans secured by real estate does not contradict the property right guaranteed by the first and second paragraphs of Article 19 of the Constitution of Georgia.

However, with regard to the use of certain categories of movable property, including the use of vehicles as a means of liens, the Constitutional Court has held that only those risks which accompany a particular legal relationship should be taken into account. According to it, the defendant could not substantiate that the transfer of the named items to the creditors would cause harm to the vital interests of the borrower. Accordingly, the Constitutional Court held that in the event of a mass default on credit obligations secured by movable property specified in the impugned norm, the damage could not have been to the extent that the interest of financial stability was seriously jeopardized. Based on the above, the Constitutional Court found that the impugned norm was contrary to the right to property guaranteed by the first and second paragraphs of Article 19 of the Constitution of Georgia.

When discussing the differentiated treatment of individuals and legal entities, the Constitutional Court noted that legal entities enjoy certain advantages due to their status, in particular, they have more tangible and intangible resources to better identify the risks arising from legal relations, make a detailed analysis of their own resources and properly study the information provided by the lender. A legal entity may fail to meet its credit obligations, however, the impugned norms are intended not to exclude individual cases but to avoid the reality where owners lose their property en masse and the scale of their purchasing power is particularly large. The Court held that such a threat to legal entities is too small, different state regulation of persons whose activities carry particular risks are justified, and thus the impugned norms did not contradict the right to equality before the law guaranteed by Article 11 of the Constitution of Georgia.

1.3.3. Second Panel

“LLC Alta”, “LLC OK”, “LLC Zoommer Georgia”, “LLC Georgian mobile import” and “LLC Smiley” v Parliament of Georgia

On December 25, 2020, the Second Panel of the Constitutional Court of Georgia made a decision in the case of “LLC Alta”, “LLC OK”, “LLC Zoommer Georgia”, “LLC Georgian mobile import” and “LLC Smiley” v. Parliament of Georgia (Constitutional claim №877).

Norms disputed in Constitutional claim №877, when an individual reproduces (copies) an audiovisual work or a work recorded on a phonogram for personal purpose, imposed an obligation to pay royalties on manufacturers and importers of the devices (for example, mobile phone and personal computer) and material medium (for example, USB flash drive) intended for reproduction of such works. In addition, the amount of royalties and the method of payment were determined, on the one hand, by the mentioned manufacturers or importers and, on the other hand, by an agreement between one of the organizations that collectively manages property rights of authors, performers and phonogram makers. If the parties failed to reach an agreement, the amount of the royalties, their calculation and payment method, based on the application of one of the parties or the parties, was determined by Sakpatenti. Sakpatenti's decision can be appealed in court within 2 months of the court decision.

In addition, the impugned norms allowed the organization managing property right on collective basis, to determine royalties, request information on the import and production of relevant equipment and material media from individuals and legal entities, as well as public

institutions. Manufacturers and importers of reproduction equipment, in turn, had an obligation to provide such information.

According to the plaintiffs, the disputed regulation defined the manufacturers and importers of devices, used for reproduction of the work of authorship as the persons responsible for the payment of the royalties, instead of the people who directly reproduce with these devices. However, according to the plaintiffs, the law did not set a fixed amount of royalties or specific criteria for its calculation and it depended on the agreement of the organization managing the property rights on a collective basis and importers/manufacturers; in the absence of an agreement - on the decision of Sakpatenti, which, according to the plaintiffs, showed the risks of unjustifiable increase of the amount of royalties and was contrary to the constitutional right to property protected by the Constitution of Georgia.

Furthermore, according to the plaintiffs, the organization managing property rights on the collective basis, on the one hand, was given indefinite authority to obtain information about importers, and on the other hand, there was no clear legislative leverage to protect the confidentiality of information provided, which contradicted the right to inviolability of information contained in official records related to personal life and personal finances or other personal matters protected by the Constitution of Georgia.

The defendant indicated, that the legitimate aim of the impugned norms was to protect copyright and neighboring rights from the free use of the work, pay to the author royalties guaranteed by the law and administer reproduction by a natural person.

The Constitutional Court of Georgia noted, that the recognition of authors as creators of works of science, literature and art and the protection of their economic interests are linked to important public legitimate goals. In this way, the state promotes innovative and creative activities, the creation, preservation and development of works of science, literature and art, as well as the formation of the cultural identity of the society. In addition, the public use of the good created by the authors, is promoted by the performers of the work, persons storing information on medium and disseminating it, and the entire commercial industry involved in the process. In this sense, protection of the economic interests of related rights holders is directly linked to the development of education, science and culture and promotes the creation, dissemination and accessibility of works of science, literature and art to the public.

The Constitutional Court of Georgia has indicated that the payment of royalties for the reproduction of an audiovisual work or a work recorded on a phonogram by individuals for personal use is related to the protection of the property interests of copyright and related rights holders. Accordingly, the basis for the payment of royalties is the reproduction of an audiovisual work or a work recorded on a phonogram for the personal use of a natural person.

Nevertheless, imposing payment of a royalty directly on a natural person who is carrying out reproduction, would make it necessary to establish the fact of reproduction by each individual, determine the appropriate royalty and administer the royalty payment, which would be associated with significant difficulties and would fail to effectively protect the property interests of copyright and related rights holders.

The Constitutional Court of Georgia did not consider it unreasonable to transfer the obligation to pay royalties to importers and manufacturers of equipment and material mediums used in reproduction. The Court noted that the manufacturers and importers of the relevant technical facilities promote the reproduction of the works by individuals for the personal use, make the appropriate equipment available to them and thus themselves receive the financial benefit. However, the Court pointed out that the number of producers and importers, considering their activities, creates favorable conditions for the administration of royalties, which, for example, does not exist in case of imposition of royalties on individuals.

As for the procedure for determining the amount of royalties, the Constitutional Court clarified that all important circumstances that affect the reproduction of a work should be considered when determining royalties. The Court noted that the law clearly indicates the "appropriate royalties" that an author or other holder of copyright may claim. Thus, the circumstances necessary to determine the eligibility of the royalty may be the nature of the device and the information medium, its functions, its primary purpose, the approximate probability of how often it will be used to reproduce the audiovisual or phonogram work for personal use, and so on. Thus, in the event of a dispute between the organization and the manufacturer/importer, the legislator is required by law to consider all relevant factual and legal circumstances and not to determine the amount of the inappropriate royalty.

The Constitutional Court also clarified that the amount of the royalty should not be determined in such a way as to fully exceed the purposes of the royalty. It is unjustified to pay royalties in cases where it is obvious that the work is not or will not be reproduced. The main guiding principle in determining the amount of royalties is to determine whether the audiovisual work or the work recorded on the phonogram is reproduced by individuals for personal use with the appropriate device or information medium. If the device or information medium has not been sold or reproduction by an individual for personal use of audiovisual work or the work recorded on the phonogram through its use is otherwise ruled out, there is no legal basis for imposing a royalty payment.

In addition, the Constitutional Court focused on the procedure for determining royalties and noted that the impugned norms determine the method of calculation and payment of royalties through negotiations between manufacturers/importers and the organization

managing collective property rights, which excludes the individual decision of the organization. In case the agreement is not reached, “Sakpatenti” will determine the relevant conditions by assessing all important factual and legal circumstances. In addition, the impugned norms provide for the possibility of reviewing the terms set by “Sakpatenti” through the court, where the legislator is obliged to check whether the amount of royalties, the method of its calculation and payment is legally determined, while considering the spirit of the law, not to set inappropriate prices and payment terms for manufacturers and importers.

In view of all the above, the Constitutional Court did not share the plaintiff's position that the Law of Georgia on Copyright and Related Rights allows for the unfair determination of royalties.

Considering the proportionality of the restriction of property rights, the Constitutional Court noted that the imposition of a financial burden on importers and manufacturers on the products sold, to some extent, allows the burden to be redistributed to the consumer. Payment of royalties by importers and manufacturers, within the royalties paid, leads to an increase in the price of products (relevant equipment and information mediums). As a result, the financial burden is indirectly imposed on consumers of products sold by importers and manufacturers. Under these conditions, the economic burden of administering the payment of royalties, including its inclusion in the price, remains with the importers and manufacturers. In addition, during the hearing it was not outlined that as a result of the payment of the royalty, the price of the product increases so much that it becomes virtually impossible and/or substantially difficult to sell it, which places an unreasonably heavy burden on the plaintiffs' entrepreneurial activities.

Based on the above, the Constitutional Court of Georgia considered that the impugned norm is in line with the property right protected by Article 19 of the Constitution of Georgia.

As for the right of the organization managing property right on the collective basis, to request information on production and imports from manufacturers and importers, the Constitutional Court clarified that the mentioned organization, under a systematic interpretation of the law, has the right to request only information related to the collection and distribution of royalties. Thus, the obligation to transfer to the copyright organization of the manufacturer and importer other information that is not related to the collection and distribution of royalties should be excluded.

The Constitutional Court pointed out, that despite the above, the current legislation does not provide for solid guarantees of protection against the disclosure of information transmitted to organizations managing property rights on the collective basis. More specifically, the law does not stipulate the obligation of the organization to ensure the confidentiality of the

information provided to it by manufacturers and importers. Also, there are no proper administrative, institutional and technical standards for information processing by the organization to prevent unintentional dissemination of information. In particular, it is not specified in what form this information should be processed, which employee of the organization and with what reservation he/she has the right to use this information, what are the technical requirements for storing information, etc. There is also no defined liability in case of disclosure of information. Under these conditions, the transfer of information to the organization, in itself, includes the possibility of its availability to the third parties. The information transferred to the organization managing property rights on the collective basis may be made available to outsiders, both with the intent of the organization and its representatives, and in the absence of such intent, by the unintentional dissemination of information.

Based on the above, the Constitutional Court considered, that the 3rd sentence of Article 21(5) of the Law of Georgia on Copyright and Related Rights contradicts Article 15(2) and Article 18(3) of the Constitution of Georgia; and the normative content of Article 64(4) of the Law of Georgia on Copyright and Related Rights, which obliges the manufacturer/importer to transfer to the organization managing property rights on the collective basis information on production and import of the equipment used for reproduction for personal use (audio and video recorders and other equipment) and material mediums (phono and video recorders, cassettes, laser plates, compact tapes and other materials mediums), contradicts Article 15(2) of the Constitution of Georgia.

Giorgi Keburia v the Parliament of Georgia

On December 25, 2020, the Second Panel of the Constitutional Court of Georgia made a decision in the case Giorgi Keburia v. Parliament of Georgia (Constitutional claim № 1276). The provisions of the Code of Criminal Procedure appealed in this case established the purpose and basis of the search, as well as the standard of proof of adopting a guilty verdict.

The plaintiff pointed out, that according to the impugned norms, it was possible to conduct a search only based on operative information received by a law enforcement officer, so that the defense and the court did not have the opportunity to verify this information with the first source. However, according to the plaintiff, in such a case, no additional investigative action was required to substantiate the information provided to the law enforcement agencies by an operative source or an anonymous person. According to the plaintiff, such regulation created risks of unjustified restriction of the right to privacy. In addition, according to the plaintiff, the

common courts often relied on substantiation of the lawfulness of the search, including the item seized as a result of the search, which was also contrary to his/her right to privacy protected by the Constitution of Georgia.

The plaintiff also considered it unconstitutional to use the testimony of a law enforcement officer, which was based on operative information received in regard to the offence, as a basis for a verdict, and indicated that the impugned norms did not meet the constitutional requirement of a guilty verdict based on incontrovertible evidence. In addition, the plaintiff considered unconstitutional the normative content of Article 13 of the Criminal Procedure Code, which allows for passing a guilty verdict based on material evidence and evidence derived from it, seized as a result of search, conducted based on information from an operative source or information provided by an anonymous person - based on the testimony of the police officers eye-witnessing this search, search/seizure protocols and expert opinions (in other words, a conclusion on the type and amount of the seized item), when the accused appealed from the beginning that the illegal item did not belong to him/her and it was "planted" by the police.

The defendant did not share the claim and explained, that the information of the operative source or an anonymous person was not sufficient to carry out one or another investigative action. The defendant noted that after receiving the said information, to verify its credibility, additional information is sought about specific circumstances. Only then is a collection of information created and it becomes possible to conduct a search.

The defendant disagreed with the plaintiff's position regarding the access of the court to the identity of the operative information provider and explained that in such a case, the activities of the investigative bodies would be significantly hindered. In addition, according to the defendant, the persons provided for by the law have access to the identity of the person providing the operative information, which insures the risks of arbitrariness on the part of the investigative body.

The defendant also clarified that the outcome of the search is not important to the court in examining the legality of an already conducted search measure, the main thing is to give the judge internal confidence that there were preconditions of urgency for conducting an investigative action, along with a substantiated presumption.

In addition, according to the defendant, the testimony of a law enforcement officer about the operative information received about the crime is not evidence, and it is neither direct nor indirect testimony by its essence. Consequently, it cannot serve as the basis for a guilty verdict. With regard to the use of an item seized as a result of a search based on information from an operative source or an anonymous person as a basis for a guilty verdict and the testimony of

police officers related to it, the defendant pointed out that the impugned norm and legislation preclude a conviction based on infallible evidence.

The Constitutional Court of Georgia indicated, that information provided by an operative source (confidant/informant) and an anonymous person to law enforcement agencies makes a particularly important contribution to the fight against crime. The information provided by the public to law enforcement agencies ensures rapid detection or prevention of crimes that would not have been possible without the provision of this information. Thus, the state cannot refuse to use the information provided by these subjects. However, according to the Constitutional Court, the secrecy (disclosure) of an operative source to verify the information provided by it at the trial cannot be considered as a less restrictive means of achieving the legitimate goals mentioned in the case. If the source did not have a guarantee of confidentiality, it and other potential individuals would refrain from cooperating with law enforcement officers in the future, which would harm important state and public interests.

According to the Constitutional Court, unlike an ordinary witness, in case of an operative source and an anonymous person, the court does not/cannot verify the reliability of the first source of information. The Constitutional Court has pointed out that in the context of using such information as a basis for a search without proper verification, there is a high risk of unnecessary restriction of a person's personal space and right to communication. Thus, in order for a law enforcement officer to have the expectation of obtaining evidence as a result of a search (which is a legitimate basis for conducting a search), it is important that this information be properly verified.

The Constitutional Court noted, that the reliability of the information for the purposes of the search could be substantiated by a variety of circumstances. For the information provided by an operative source or an anonymous person to be the basis for searching a person, the information itself must be such that it can be verified to some degree so that the objective person/judge can be sure that the information provider possesses important data for the case, can point to specific facts, or describe a specific future event related to the crime, or the information itself is characterized by certain details. It should be noted from the information that the source is indeed indicating details that may not be easily identifiable/perceptible to the ordinary third party, and that its observation must involve some effort/experience. In addition, the reliability of the information can also be confirmed by the testimony of a police officer who has been warned of criminal liability in case of providing false information and who indicates that the source is experienced and reliable, and the information provided has been credible in the past as well. Clearly, it is not out of the question for a police officer to fabricate this information because of his/her interest in the case, however, as mentioned, such

a fact carries with it the relevant criminal liability and this reduces the risk of intentionally providing inaccurate and false information by the police officer.

The Constitutional Court has pointed out that any predetermined formula for verifying information fails to properly serve the purposes of the State in combating crime, and the circumstances cited in the judgment will be considered as a single case out of the many factors that would justify the reliability of the operative information.

The Constitutional Court noted, that based on a systematic and grammatical interpretation of the law, a search based solely on information provided by an operative source or an anonymous person should be excluded, a reasoned presumption requires at least one other piece of information or fact for an authorized person to have a reasonable degree of suspicion. Thus, a lawful search should be ruled out only under an operative source or information provided by an anonymous person under the Criminal Code.

The Constitutional Court upheld the plaintiff's view, that if the protocol of interrogation of the person compiling/receiving the report on receipt of the operative information, without providing any additional information, repeats only the information described in the report or only the information provided by the operative source, it equals one information, which obviously cannot be assessed as a combination of information or facts. In case of contrary, a combination of facts and information will always be created, as there will always be a police officer who will confirm the fact of transfer of information from the operative source and convey the content of the information provided by the operative source. However, there was no clear and relevant practice in the case to prove that the basis of the search was only the report of the person receiving the operative information and the interrogation protocol of that person repeating the information in the report and/or the operative source, without providing any additional information and/or verifying the information.

The Constitutional Court found, that in the court practice of the common court there had been cases when the result of a search was the basis for substantiating the lawfulness of the search. The Constitutional Court clarified that the fact of obtaining evidence as a result of the search was an irrelevant circumstance in verifying whether it had correctly assessed the existence of a substantiated presumption prior to the search. Accordingly, the assessment of the need/necessity of a particular search is not affected by the fact that relevant evidence was obtained as a result of that search. Accordingly, the Constitutional Court of Georgia considered unconstitutional the normative content of Article 119(1) and (4) and Article 121(1) of the Criminal Procedure Code of Georgia, which considers the result of the search as one of the grounds for making a substantiated presumption necessary for the search.

The Constitutional Court found, that there had been cases in the common court practice where the testimony of a police officer receiving operative information, where the latter, without giving any additional information, simply conveyed the narrative of the operative information source, was used as one of the grounds for a guilty verdict. The Constitutional Court noted that by the content, the testimony of a police officer, which is based on information provided by a source of operative information - a confidant/informant - is a form of indirect testimony that poses equal risks to the state's obligation to pass a guilty verdict based on incontrovertible evidence. In addition, the Constitutional Court clarified that the use of such testimony by a police officer for a guilty verdict clearly puts the defense in an unequal position. The defense does not have the opportunity to directly question the person providing the operative information, to doubt the reliability and persuasiveness of the person on whose testimony the court relies in passing the guilty verdict. Failure of the defense to do so would clearly jeopardize passing guilty verdict on the case based on incontrovertible evidence.

In view of the above, the Constitutional Court of Georgia declared unconstitutional the normative content of the second sentence of Article 13(2) of the Criminal Procedure Code, which provides for a guilty verdict based on the testimony of a law enforcement officer, which is based on information provided by an operational source.

The Constitutional Court also assessed the constitutionality of the use of material evidence seized as a result of the search based on operative information and the evidence derived from it as the basis for a guilty verdict. The Constitutional Court found that the case file showed that in the common court, including the appellate and supreme courts, there had been instances when a guilty verdict has been passed against a person with such a unity of evidence, which consisted of an item (narcotic or firearm) seized as a result of a search on the basis of information provided by an operative source, based on the consistent testimony of the police officers co-participants/attendees of the search, based on the search and arrest reports, and chemical expertise (describing the type/essence and amount of items seized).

The Constitutional Court noted that the above-mentioned unity of evidence, which forms the basis for a guilty verdict, in some cases, may not meet the constitutional requirements for the veracity of the evidence provided for in Article 31(7) of the Constitution of Georgia. The state is obliged to establish a system of obtaining evidence as a result of the search, which, on the one hand, equips law enforcement officers with the ability to obtain neutral evidence to ensure the credibility of the search, and on the other hand, reduces the risk of abuse of power. In general, the importance of having confidence in the actions taken by a police officer for the effective administration of justice is immeasurably great. In addition, no state body, not even a court, can gain trust without carrying out its activities properly. When the question of the

use of an item seized as a result of a search depends solely on the testimony of the police officers, it would be essential for their credibility to know what led to the creation of such reality. The presumption of conscientious action of the police is much simpler when it is proved that due to the factual circumstances in the case, it was impossible (immeasurably difficult) to obtain additional evidence regarding the reliability of the search. However, when it becomes apparent that a police officer could have obtained evidence to substantiate the credibility of the search and he/she did not do so, the degree of confidence in his/her actions is greatly reduced.

The Constitutional Court noted, that given the complexity of the investigative action, in all cases, due to objective circumstances, it may not be possible to substantiate the fact of the search with neutral evidence, although it must be confirmed that the competent person took reasonable steps to ensure that neutral evidence was obtained. An obvious example of this is when the investigation of the case reveals that the possibility of the presence of a neutral witness during the search of the person or his/her property was objectively present and the police did not provide it. Moreover, modern technological progress makes it possible to video record the search process to strengthen the position of the prosecution. Significant doubts about the credibility of the evidence are also raised by the circumstance when, under the safety conditions of the police, there was a real possibility of video recording of the search and the police did not use it. Obtaining operative information does not always require urgent action and the authorized person may also have some time and opportunity to prepare before the search, be equipped with the appropriate technical means and, where possible, provide a video recording of the search. In addition, even in an emergency, it is usually not an insurmountable difficulty to record a search even with a video camera on a mobile phone, which is now virtually an everyday item.

In view of the above, the Constitutional Court clarified, that failure to make actual use of the available investigative evidence, which would substantiate/strengthen the evidence against the person poses significant risks of error, arbitrariness and abuse of power in the administration of justice. Nevertheless, current law does not oblige law enforcement officers to obtain neutral evidence to ensure the credibility of a search, even when it is possible to act within reasonable limits without compromising the security of the police and/or the threat of destruction/concealment of evidence.

In view of all the above, the Constitutional Court has ruled that legislation and the impugned norm fail to insure a person's conviction risks by using unreliable evidence. Accordingly, the normative content of the impugned norm, which allows the use of an illegal item seized as a result of a search, as evidence, when the possession of the seized item by the

accused is confirmed only by the testimony of law enforcement officers and at the same time law enforcement officers could, although no appropriate measures have been taken to obtain neutral evidence proving the credibility of the search, fails to meet the constitutional requirements of veracity provided for in Article 31(7) of the Constitution of Georgia and is unconstitutional.

The Constitutional Court of Georgia has postponed the annulment of the mentioned normative content until July 1, 2021 in order to give the legislator and the relevant bodies a reasonable period of time to implement the legislative or institutional changes necessary for the implementation of the decision.

Khatuna Tsotsoria v. the Parliament of Georgia

On December 29, 2020, the Constitutional Court of Georgia made a decision in case *Khatuna Tsotsoria v. Parliament of Georgia* (Constitutional claim № 1337). The case concerned Article 1455 of the Civil Code of Georgia, which stipulated that in case of division of the estate, the value of the property she received as a gift from the estate-leaver within 5 years before the opening of the estate would be considered in the share of each heir.

According to the plaintiff, in case of gift from the estate-leaver to the heir, when opening the estate, based on the impugned norm, the share of the heir who received gift was unjustifiably reduced in favor of heirs of another equal order, which contradicted the property right of both heir and estate-leaver guaranteed by the Constitution of Georgia.

According to the defendant, the representative of the Parliament of Georgia, the challenged norm served the principle of fair distribution of shares between the legal heirs and, consequently, the legitimate aim of protecting the interests of other co-heirs. At this point, the legislature acts on the presumption that the heir wants all heirs to be treated equally. However, it is considered that the legal heirs have been engaged in a single-family economy for 5 years before the death of the estate-leaver. Thus, since the estate-leaver does not use the possibility of asymmetric distribution of the estate among the testamentary heirs, the impugned norm ensured a reasonable balance of interests. However, since the person who received gift retains ownership of the property after the opening of the estate and only the value of that property is included in the inheritance share, there was no threat to his/her right of ownership. However, since the person who received gift retains ownership of the property after the opening of the estate and only the value of that property is included in the share of the estate, there was no threat to his/her right of ownership.

The Constitutional Court, based on the interpretation of the impugned norm, as well as the analysis of the practice established by the Supreme Court of Georgia, found that it obliged the plaintiff, as the legal heir, to include into own share when distributing the estate, the cost of the property received as a gift during 5 years prior to the opening of the estate from the estate-leaver. Of course, this did not imply the loss of ownership of the property received as a gift, but it did reduce his/her share of the estate and thus constitute a restriction on his/her constitutional right to property.

The Constitutional Court shared the defendant's explanation, according to which, at the time of the legal inheritance, a fair distribution of the shares from the estate among the heirs was a legitimate interest, which makes it possible to restrict property rights. At the same time, according to the Court, the impugned norm is based on the presumption that the estate-leaver wishes to treat all heirs of equal order equally. It is true that, in general, the settlement of inheritance-legal issues by the legislator is permissible based on presumption, however, in a particular situation, the selected measure should resolve the issue by maximizing the balance of interests.

The Constitutional Court noted that when giving property as a gift, the estate-leaver cannot determine in advance either the moment of opening the estate or the legal status of the person gifted at that time. It is true that the estate-leaver at the time of the alienation of the property may have had a desire to influence the shares of the heirs in the future by this transaction, however, without his/her express will, nothing indicated, at least in most cases, the existence of such a desire. According to the impugned norm, the legislator relied on the legislative presumption not only when it was impossible to determine the will of the estate-leaver, but also when the latter was alive and carried out the alienation of the property by gifting.

The Constitutional Court has pointed out that it is inadmissible for the legislature to act solely on his/her own assumption and disregard the true will of the estate-leaver, the property owner. Replacing the will of the estate-leaver with a legislative presumption, when a reasonable assessment of the action clearly indicates the purpose of the unconditional gift of property, lacks a logical explanation. At this point, the legislature assumes that the will of the estate-leaver is actually the opposite of what he/she expresses. Civil law should be focused on respecting the will of the owner, whereas a similar presumption is like disregarding the will of the estate-leaver when he/she attributes the fact of gifting the property by him/her, without indicating the giver, to additional consequences. At the same time, the court noted that there was no legitimate interest which would justify overcoming the will of the owner regarding the disposal of the property.

Accordingly, the Constitutional Court held that the impugned norm did not strike a reasonable balance between the property rights and public interests of the estate-leaver and the heir, which was therefore contrary to the property right enshrined in Article 19(1) and (2) of the Constitution of Georgia.

Irakli Jugheli v. Parliament of Georgia

On December 29, 2020, the Second Panel of the Constitutional Court of Georgia reached a decision in the case of Irakli Jugheli v. Parliament of Georgia (Constitutional claim № 1412). The impugned norm in the case stipulated that the total period of administrative detention of a person whose period of detention coincides with non-working hours should not exceed 48 hours.

The plaintiff argued that the impugned regulation made an unjustified differentiation of persons under administrative detention according to the time of detention. In particular, the maximum period of detention of persons detained during non-working hours was 48 hours, and of persons detained during working hours - 12 hours. The plaintiff pointed out that the persons under administrative detention, regardless of the time of the administrative detention, were substantially equal persons and had an equal interest in the enjoyment of procedural safeguards. The 36-hour difference between the maximum time limits for the detention of persons, determined by the impugned norm, did not constitute a means of achieving any legitimate goal and was contrary to the right to equality enshrined in the Constitution of Georgia.

According to the Parliament of Georgia, the differentiation caused by the impugned norm was conditioned by the limited work schedule of the court. The challenged regulation made it possible not to dismiss persons whose trial period coincided with the court's non-working hours without a court hearing. Accordingly, the challenged regulation served to ensure the administration of justice. However, the police officer was obliged to bring the person under administrative detention to court as soon as possible, otherwise there would be an illegal detention of the person. In view of all the above, the defendant considered that the differentiation arising from the impugned regulation was not characterized by high intensity, was based on objective grounds, and met the requirements of the right to equality. However, the police officer was obliged to bring the person under administrative detention to court as soon as possible, otherwise there would be an illegal detention of the person. In view of all the above, the defendant considered that the differentiation arising from the impugned

regulation was not characterized by high intensity, was based on objective grounds and met the requirements of the right to equality.

The Constitutional Court of Georgia found that the impugned norm linked differentiation of persons to the expiry of general, 12-hour period of administrative detention of a person. In particular, if the expiry of the 12-hour period intended for the detention of a person coincided with the non-working hours of the court, the maximum period of administrative detention of the person might have been 48 hours, and if the expiration of the 12-hour period intended for the detention of a person coincided with the working hours of the court, then the detention of a person could not last longer than 12 hours. The Constitutional Court noted that both groups of detainees had identical procedural status and equal interest in making use of the procedural guarantees. Consequently, the persons to be compared for the purposes of the existing legal relationship were substantially equal and the impugned norm restricted the right of everyone to equality before the law.

The Constitutional Court of Georgia held, that the differentiation established by the impugned norm did not constitute a means of achieving the legitimate aim named by the defendant - the administration of justice. The court considered that the judges on duty in the administrative chambers of the common courts hear cases on weekends as well. Consequently, even a 24-hour period of detention of a person necessarily included the working time of a court. Due to the above, the possibility of extending the administrative detention to 48 hours could not be explained by the non-working time of the court. However, the Court noted that the objective circumstances named by the defendant, such as the busy schedule of the trial court or the deteriorating health of the trial judge, applied equally to any case of detention. Nevertheless, the maximum period of detention imposed on a certain circle of persons was 12 hours, or a maximum of one working day of a judge, and the maximum period of detention imposed on another group of persons was 48 hours, or 2 working days of a judge.

The Constitutional Court of Georgia noted that under the impugned norm, an objective circumstance such as a busy schedule of the court might have forced the police officer to present some persons to the court on a priority basis over other previously detained persons, which on the one hand, would have been illogical and devoid of any rational explanation, and on the other hand, was a significant source of injustice. However, the defendant did not name any additional circumstances that indicated the rationality of such legislation. In view of all the above, the Constitutional Court considered that the regulation established by the impugned norm was discriminatory and contrary to the right to equality protected by Article 11(1) of the Constitution of Georgia.

However, the Constitutional Court pointed out that as a result of recognition of the impugned norm as invalid upon declaration of the decision of the court, the maximum period of the administrative detention would in all cases be 12 hours, which in some cases did not coincide with the court's working hours. Consequently, a person could not be brought before a judge, which in some cases might have resulted in a significant breach of interest. Based on the above, the court considered it expedient to postpone the declaration of the impugned norm as invalid until June 1, 2021, to give a reasonable time to the Parliament of Georgia to settle the issue in accordance with the standards established by the decision of the Constitutional Court of Georgia.

2. International relations and other activities

2.1. Public communication and publishing activities

Restrictions imposed with the aim of prevention of the spread of coronavirus (COVID-19) have had a significant impact on the communication and educational activities of the Constitutional Court of Georgia. It is noteworthy that the Office of the Constitutional Court switched to a special mode of operation on 13 March 2020, which provided for remote operation for most of the Office of the Constitutional Court and the placement of on-site staff in separate, isolated rooms.

2.1.1. Electronic portal of litigation

In terms of increasing public communication and access to the Constitutional Court, the launch of an electronic portal of litigation is noteworthy. The Constitutional Court started using the electronic system of constitutional litigation from January 2020. From April 2020, the electronic portal of external users of the system (plaintiff/defendant and their representatives) was launched in the testing mode. From May 18, 2020, the portal can be used by any person who is the author of the claim/submission or the defendant/recipient of the impugned normative act, as well as their representative on the current constitutional claim registered with the Constitutional Court.

Through the electronic portal, users can get acquainted with the case materials and communicate with the Constitutional Court regarding the relevant case.

To use the electronic portal, it is necessary for the litigant to apply to the Constitutional Court in accordance with the instructions. The portal activation link will be sent to the person after verifying the authenticity of the request.

The electronic system of constitutional litigation was set up with the support of the EU Court Support Project (EU4Justice). In addition, the Council of Europe continues to support the project to ensure the robustness, security and reliability of the critical modules of the system and external users. Within the framework of the project, the communication module between the court and the parties is refined, the identified technical shortcomings eliminated and the needs of the new Rules of Procedure of the Constitutional Court in the relevant program modules reflected.

2.1.2. Editions of the “Journal of the Constitutional Court”

In 2020, the Constitutional Court resumed its publishing activities with the aim of developing research in the field of the constitutional law. In 2020, two editions of the “Journal of the Constitutional Court” were published.

In particular, the special edition of the journal, published on **June 15, 2020**, was devoted to the constitutional regulation of the state of emergency and the issues of protection of human rights in such situations. In the context of the coronavirus (COVID-19) pandemic, which has put the implementation of crisis management on the agenda, the topic of this publication is of particular relevance.

The special edition of the journal includes the works of internationally recognized researchers, whose right to publish in Georgian was acquired exclusively by the journal. In particular, the reader can get acquainted with the authoritative and often cited foreign scientists - Bruce Ackerman, Eric A. Posner and Clarice Long - articles on the experience of emergency management in the United States, as well as on the protection of personal information in a pandemic. Bruce Ackerman's paper, which discusses the case of the transfer of power to the executive branch after the terrorist attacks of September 11, 2001, from a constitutional point of view, is one of the most authoritative contributions to the topic of the state of emergency. He is also the author of the second paper in which the author presents an idea of what is needed to balance power in the hands of the executive. Eric Posner's paper discusses the essence of the thesis of trusting the executive power to make decisions, the scope of its operation on the example of the United States. No less interesting and relevant is Clarice Long's latest publication, which discusses the practice of collecting personal data by states in the context of COVID-19 pandemic.

The special edition also includes the works of young Georgian scholars on important legal issues, such as norm-making process in the state of emergency, the protection of property

rights, also, the threats posed by the state of emergency to the democratic system and the exercise of parliamentary functions in the emergency mode of government.

The second annual edition of the “Journal of Constitutional Court” was published on **November 30, 2020**. The publication includes an article by former United States Supreme Court Justice Ruth Bader Ginsburg and Professor Deborah Johns Merritt, first published in 1999, which examines the essence of equipping action and its international legal framework, it also reviews the practice of achieving equality between men and women in the US, India and the European Union. It is noteworthy that after the introduction of the gender quotas mechanism by the Parliament of Georgia based on gender representation, the mentioned issue has a special urgency for the Georgian reality. The article outlines the practice of remedial action at the time in addressing both gender discrimination and other forms of inequality.

The second edition of the journal of 2020 also offers a paper by Professor Cass Sanstein that addresses a fundamental problem of social significance and discusses how people develop anger and resentment in society. Following the example of social protests in the United States in recent years, the paper assesses the power of people who begin to undermine established norms and the importance of public sentiment in the success of the fight for minority rights.

In addition, the current edition brings together the works of Georgian scholars on important legal issues. In particular, given the regional context, it is important, on the one hand, to consider the jurisdiction of the European Court of Human Rights in relation to complaints of human rights violations in armed conflict, and, on the other hand, to review the practice of inter-American human rights bodies in applying international humanitarian law. The journal also covers papers on constitutional aspects of competition, freedom of enterprise and consumer protection, and the importance of restricting freedom of expression and freedom of information in the context of the new Coronavirus (COVID-19) pandemic.

The current edition also provides an overview of two precedent-setting decisions made by the Plenum of the Constitutional Court in 2020.

It should be noted that the "Journal of Constitutional Court" is published in Georgian and English in the framework of cooperation between the Constitutional Court of Georgia and Grigol Robakidze University and is intended for publishing scientific papers of law scholars, experts and students. The publication is now listed in the International Directory of Open Access Journals (DOAJ) and indexed in the database of European academic publications in the humanities and social sciences (ERIH PLUS), which recognizes journal standards, openness policy and ethical criteria. Placement of the "Journal of Constitutional Court" in the mentioned database will further increase its authority and provide wide access to the works published in the journal.

2.2.International Relations

During the recent decades, the Constitutional Court of Georgia has been active in the international arena and has carried out a number of measures. Unfortunately, restrictions to prevent the spread of coronavirus (COVID-19) changed the Court's international relations agenda in 2020. In particular, a number of planned activities in the international format were canceled or postponed.

Despite the current situation, the Constitutional Court of Georgia carried out the following activities during 2020:

2.2.1. Significant visits of the President/members of the Court in 2020

The Constitutional Court of Georgia closely communicates with the Constitutional Courts of foreign countries and international institutions within the framework of conferences/bilateral meetings.

- **January 31, 2020** - Zaza Tavadze, Chairman of the Constitutional Court of Georgia, took part in the events related to the opening of the Court's working year at the invitation of the European Court of Human Rights in Strasbourg. Zaza Tavadze met with the President of the European Court of Human Rights Linos-Alexandre Sicilianos during his working visit. During the meeting, the parties discussed the successful cooperation between the Constitutional Court and the European Court of Human Rights, which has been developing for many years.

The meeting was also attended by Judge Lado Chanturia of the European Court of Human Rights, representatives of the European Court of Human Rights, Giorgi Lomtadze, Head of the Protocol and Public Relations Department of the Constitutional Court, and Irakli Giviashvili, Ambassador Extraordinary and Plenipotentiary of Georgia to the Council of Europe.

The role of the Constitutional Court of Georgia in the process of protecting the supremacy of the Constitution and strengthening the rule of law in Georgia was positively mentioned at the meeting.

- **February 19-20, 2020** - Zaza Tavadze, Chairman of the Constitutional Court of Georgia, and Giorgi Sulxanishvili, Chief Advisor of the Legal Support and Research Department, paid a working visit to the Republic of Moldova, where they participated in the events dedicated to the 25th anniversary of the Constitutional Court of the Republic of Moldova.

Within the framework of the visit, the delegation of the Constitutional Court of Georgia attended the international conference - "Constitutional Justice and Public Reaction: when the

majority of the public disagrees with the decisions of the Constitutional Courts." The event was also attended by the Chairman of the Venice Commission of the Council of Europe, judges of the Constitutional Courts from Europe and representatives of academic circles.

It should be noted that Zaza Tavadze held a meeting with the Chairman of the Constitutional Court of the Republic of Moldova Vladimir Turchan in the format of the Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions (BBCJ). The meeting was also attended by the President of the Constitutional Court of the Republic of Lithuania, Danius Jalimas. The parties discussed the close cooperation between the member constitutional courts and the possibility of its development.

Zaza Tavadze also had a face-to-face meeting with Gianni Buquicchio, Chairman of the Venice Commission of the Council of Europe. The parties discussed the cooperation between the Constitutional Court of Georgia and the Venice Commission.

- **March 9, 2020** - the Chairman of the Constitutional Court of Georgia Zaza Tavadze paid a working visit to Astana, where he met with the Chairman of the Constitutional Council of the Republic of Kazakhstan Kairat Mami.

The meeting was of introductory nature, during which the parties discussed areas of cooperation between the two institutions. The Constitutional Court of Georgia and the Constitutional Council of the Republic of Kazakhstan have a history of cooperation in the format of multilateral relations within Europe and the world. At the meeting, the desire was expressed to develop bilateral cooperation between the institutions.

- **August 28, 2020** - the Chairman of the Constitutional Court of Georgia Merab Turava participated in the international conference organized by the Constitutional Council of the Republic of Kazakhstan: "Constitution of the XXI century - the rule of law, human dignity and efficiency of the state", which was held online. The event was dedicated to the 25th anniversary of the Constitution of the Republic of Kazakhstan and was held within the framework of the IV Congress of the Association of Constitutional Courts and Relevant Institutions of Asia.

The participants of the conference were welcomed by the President of the Republic of Kazakhstan Kassym-Jomart Tokayev and the President of the Venice Commission of the Council of Europe Gianni Buquicchio.

The event was attended by judges from the highest national courts of Europe and Asia, as well as representatives of international organizations and academic circles.

2.2.2. Cooperation with the diplomatic corps accredited in Georgia, international and donor organizations

The Constitutional Court also actively cooperates with the diplomatic corps accredited in Georgia, international and donor organizations.

- **July 14, 2020** - the Ambassador Extraordinary and Plenipotentiary of the United States of America to Georgia Kelly Degnan visited the Constitutional Court of Georgia and was hosted by the Chairman of the Constitutional Court Merab Turava.

Given her qualifications and experience in the field of law, Ambassador Degnan was interested in the system of constitutional control in Georgia, the competence of the Constitutional Court, and the practical aspects of legal proceedings. Merab Turava spoke with the Ambassador about the activities of the Constitutional Court of Georgia, the procedure of constitutional proceedings and the effects of court decisions.

The meeting was introductory in nature. The parties expressed their desire to enhance cooperation between the Embassy of the United States of America in Georgia and the Constitutional Court.

- **July 20, 2020** - the Head of the Council of Europe Office of the Constitutional Court of Georgia, Christian Urse visited Georgia and was hosted by the Chairman of the Constitutional Court, Merab Turava.

The meeting focused on the activities of the Constitutional Court, the importance of its decisions in the development of the Georgian legal system. The parties also noted the close cooperation between the Constitutional Court and the Office of the Council of Europe in the framework of the joint project of the Council of Europe and the European Union - "Improving the accountability and efficiency of the judiciary and improving the professionalism of lawyers in Georgia" - which provides a component of institutional strengthening of the Constitutional Court.

Christian Urse, who has been conducting activities in Georgia, expressed respect for the Constitutional Court and positively evaluated the role of the Constitutional Court in strengthening the rule of law in Georgia.

Merab Turava thanked Christian Urse for his support and for his valuable contribution to the process of strengthening cooperation between the Constitutional Court and the Council of Europe. The Chairman of the Constitutional Court also expressed his gratitude for the work performed by Christian Urse in Georgia and wished him success in his future professional activities.

- **August 1-2, 2020** - Merab Turava, the Chairman of the Constitutional Court of Georgia, took part in a workshop organized by the EU Court Support Project (EU4Justice) on the

publication of court rulings and the regulation of personal data protection at the Hilton Hotel in Batumi.

The Chairman of the Constitutional Court addressed the audience and, focusing on the topic of the meeting, drew attention to the decision of the Constitutional Court of June 7, 2019, which declared unconstitutional the General Administrative Code and the normative content of the disputed provisions of the Law of Georgia on Personal Data Protection, which precludes the issuance of the full text of court acts adopted as a result of an open court session in the form of public information.

Anri Okhanashvili, Chairman of the Legal Affairs Committee of the Parliament of Georgia, Renate Winter, Head of the EU Court Support Project, Giorgi Mikautadze, Secretary of the High Council of Justice of Georgia, and State Inspector Londa Toloraia also addressed the invited guests.

At the working meeting, a presentation of the research of Maia Kopaleishvili, Professor of Administrative Law at Ivane Javakhishvili Tbilisi State University, Senior Expert of the EU project "Support to Judicial Reform in Georgia", former Judge of the Constitutional Court, was presented on the topic: "The balance established by the Constitution between the right of public access to judicial acts and the right to protection of access to personal data." The working version of the legislative changes prepared by the Legal Affairs Committee of the Parliament of Georgia was also reviewed at the meeting.

The event was attended by representatives of the Constitutional Court, as well as the Parliament of Georgia, the State Inspector's Office, the Supreme Court and civil society.

2.2.3. EU and Council of Europe co-financed project "Support to Judicial Reform in Georgia"

In January 2020, the project "Support to Judicial Reform in Georgia" co-financed by the European Union and the Council of Europe was launched, one of the components of which is the institutional strengthening of the Constitutional Court of Georgia. The aim of the project is to ensure the efficiency of the Constitutional Court, improve the legal framework, promote the continuous professional development of the judiciary, ensure access to constitutional control, position the Constitutional Court positively and raise awareness of its role and functions. The project will be implemented in 2020 - 2021, within which various types of activities are planned.

Consortium of Electronic Law Libraries (CELL).

A consortium of law e-libraries (CELL) was established through the direct efforts of the Georgian Law Institute and with the financial support of the EU/Council of Europe joint “Judicial Reform Support” project and the USAID-funded “Support to Rule of Law in Georgia” (PROLoG) program. The consortium allows members/staff of the Constitutional Court to have access to electronic legal resources (Westlaw and HeinOnline), which in turn will improve the quality of research and scientific work.

It should be noted that access to academic resources requires a special, expensive membership fee, which makes available thousands of legal literature, academic journals and other relevant periodicals.

The parties to the consortium can share the annual membership fee and have unimpeded access to academic resources. This makes the Academic e-library of the institutions more accessible and cost-effective, as membership fees will no longer depend on donor support.

The founding members of the consortium are the Constitutional Court of Georgia, the Georgian National Communications Commission, Sulkhani-Saba Orbeliani Teaching University and the University of Georgia. However, the consortium is open to collaborating with other interested public, academic or private organizations to increase the number of members and, consequently, to access more electronic resources.

2.2.4. Conference of European Constitutional Courts

In 2017-2020, the Conference of European Constitutional Courts was chaired by the Constitutional Court of the Czech Republic. It should be noted that due to the Coronavirus (COVID-19) pandemic, the XVIII Congress of European Constitutional Courts scheduled for May 26-29, 2020 in Prague was postponed and by the decision of the member courts, was held on February 24-25, 2021 in a remote format.

Merab Turava, Chairman of the Constitutional Court of Georgia, participated in the XVIII Congress of the Conference of European Constitutional Courts, organized by the Constitutional Court of the Czech Republic.

On the 24th of February, within the framework of the XVIII Congress, the Presidents of the European Constitutional Courts resolved various organizational issues, including the decision that the XIV Congress of the Conference of European Constitutional Courts would be chaired by the Constitutional Court of the Republic of Moldova.

A conference was held on February 25, during which speakers delivered presentations on the thematic issue of Congress. The theme of the XVIII Congress was "Human Rights and

Fundamental Freedoms: Interdependence of International, Supranational and National Catalogs in the 21st Century."

The event was attended by judges of the European Constitutional Courts, as well as the Presidents of the European Court of Human Rights and the Court of Justice of the European Union.

It should be noted that in 2014-2017, the Conference of European Constitutional Courts was chaired by the Constitutional Court of Georgia, within the framework of which the events of the XVII Congress were held in Batumi in 2017.

The Conference of European Constitutional Courts was established in 1971 and brings together 41 European Constitutional Courts and relevant institutions. The purpose of the conference is to facilitate the sharing of information and experience on constitutional control issues between the member courts on the basis of regular liaison between the Constitutional Courts. It also aims to enhance the independence of the constitutional courts as an important factor in democracy and the rule of law in order to ensure the protection of human rights.

The structure and competence of the Conference of European Constitutional Courts are governed by its statute and rules of procedure. The Constitutional Court of Georgia has been a member of the conference since 2000.

3. Important directions for strengthening constitutional legitimacy

The year 2020 was important and full of challenges for the Constitutional Court of Georgia both in terms of the constitutional standards established by the decisions and in terms of effective implementation of constitutional control in the conditions of pandemic and ensuring public awareness of its progress.

3.1. Constitutional-legal standards set in 2020

In 2020, the Constitutional Court made important clarifications regarding the content and scope of freedom of religion³⁸. In particular, the Constitutional Court clarified that the plaintiffs' religious objections, such as their refusal to obtain an electronic identity card on the grounds of religious belief, were protected by Article 16(1) of the Constitution, as they did not contradict democratic values and had some basis in orthodox teaching, while at the same time meeting the constitutional standard of seriousness and persuasiveness. The court found that it

³⁸ Judgment №1/1/1404 of 4 June 2020 of the Constitutional Court of Georgia in case "Nana Sepashvili and Ia Rekhviashvili v. Parliament of Georgia and Minister of Justice of Georgia"

was inadmissible to consider within the scope of the protected area only the religious views of a person shared by the majority of members of the relevant denomination/religious group. Rather, in such a case the crucial importance should be given to the sincerity of the person, conscience of his/her resistance. Article 16 of the Constitution protects only such declaration (action/inaction), which is closely and directly related to that belief.

In the present case, the Constitutional Court of Georgia pointed to the neutral nature of the impugned norms and explained that the general regulation of the state, which does not impose specific restrictions on freedom of belief and, at the same time, has no direct substantive link to matters of belief/religion, cannot be considered as state interference in the freedom of belief/religion. Freedom of belief/religion protected by the Constitution of Georgia does not imply a positive obligation of the state, when drafting official documents, to consider all the sincere objections that may arise on the basis of belief to its citizens belonging to different religions. Especially in cases when one or another action inspired by religious belief is not a principle/obligatory requirement of the respective religion.

It should also be noted from the practice of 2020 that the Constitutional Court of Georgia has discussed the current model for the selection of candidates for the position of a judge of the Supreme Court of Georgia by the High Council of Justice of Georgia³⁹. The Constitutional Court held that, taking into account, on the one hand, the High Council of Justice staffing procedure and the Supreme Court judges' role in the final appointing of judges, and, on the other hand, the High Council of Justice decision-making procedures and the existing complex procedures and guarantees to ensure selection of conscientious and competent candidates, the decision of the Council, as a collegial body, to select candidates for judges of the Supreme Court secretly and without written justification was not contrary to the requirements of the Constitution of Georgia, and the existing model ensured the nomination of suitable candidates for the Parliament.

In this case, the Constitutional Court also noted the importance of staffing the court with conscientious and competent judges, explaining that the right to a fair trial becomes a fiction without judges with proper dignity, qualifications, who are faithful to constitutional values and human rights. The public will not be able to trust the judiciary unless the judges themselves have the ability to properly administer and serve justice. Thus, the only unconditional means of exercising the right to a fair trial is to staff the court with proper judges. This, in itself, means staffing the court with candidates who fully meet the criteria of competence and good faith set for judges.

³⁹ Judgment №3/1/1459,1491 of the Constitutional Court of Georgia of July 30, 2020 in the case "Public Defender of Georgia v. Parliament of Georgia"

In 2020, the Constitutional Court of Georgia made a significant clarification on the institution of compulsory quotas based on sex in party lists and in this regard the positive obligations assumed by the state under Article 11(3) of the Constitution of Georgia⁴⁰. In particular, according to the Constitutional Court, Article 11(3) of the Constitution of Georgia is a general guiding principle for the state, which is committed to promoting the equal realization of the skills of men and women in various ways in the process of policy planning and implementation. The purpose of the named constitutional provision is to create an environment in which women and men achieve equal success through equal labor and skills. This can be achieved by establishing mechanisms to balance gender-related and artificial barriers to success.

In this case, the Constitutional Court of Georgia discussed the factual reality in Georgia, which clearly indicated that the low representation of women in the Georgian Parliament was directly related to the existence of artificial barriers to the realization of their skills, therefore, for the purposes of Article 11(3) of the Constitution of Georgia, it was justified for the state to take measures that would increase the number of women in the Parliament and thus balance the inequality caused by the existence of artificial barriers. In determining the constitutionality of the impugned norm, the Constitutional Court of Georgia took into account the less intense restriction of the right deriving from the norm and the temporary nature of its validity and considered that the normative content of the impugned norm, which required election subjects to have at least one female candidate in every four of the party lists for the Georgian Parliamentary elections to be held before October 26, 2024 parliamentary elections, complied with the requirements of the Constitution of Georgia.

Among the cases considered in 2020, the decision of the Constitutional Court of Georgia on early termination of the term of office of a member of Parliament of Georgia based on the guilty verdict of the court of the first instance is also noteworthy.⁴¹

The Constitutional Court of Georgia has clarified that, given the constitutional status of a Member of Parliament, the importance of his/her functions and the source of legitimacy, it is necessary to have a solid constitutional basis for protecting the rights and interests of a Member of Parliament and his/her authority not to be terminated in a manner incompatible with the principle of democracy. In addition, the Constitutional Court drew attention to the nature of the crime committed by the plaintiff found guilty by the Court of the first instance and noted

⁴⁰ Judgment №3/3/1526 of September 25, 2020 of the Constitutional Court of Georgia in the case "Political Union of "Non-entrepreneurial (Non-commercial) Legal Entity Citizens political union "New Political Center", Herman Sabo, Zurab Girchi Japaridze and Ana Chikovani v. Parliament of Georgia"

⁴¹ Judgment №3/2/1473 of September 25, 2020 of the Constitutional Court of Georgia in the case "Nikanor Melia v. Parliament of Georgia"

that the Constitution of Georgia requires that legislative activity be carried out only by persons whose conduct is inconsistent with the status of a Member of Parliament, so that the activities of the Parliament of Georgia are not irreparably damaged and the credibility of its legislative, representative and controlling functions is not called into question. According to the Constitutional Court, there should be a perception in the society that the activities and legislative process of the Parliament are free from internal and external interference, narrow personal interests and illegal influence. It will be impossible to achieve this goal if the person found guilty by the court of the first instance continues to work in the legislature.

The year 2020 was also important in terms of improving the rights of victims in criminal proceedings. The Constitutional Court declared unconstitutional the normative content of Article 57(1)(h) of the Criminal Procedure Code of Georgia, which blanketly excluded the possibility for the victim to obtain information on the investigation through the receipt of copies of criminal case materials, including the mentioned case, when the mentioned action did not jeopardize the interests of the investigation.⁴²

Among the decisions made by the Constitutional Court over the past year noteworthy is the reasoning developed by it in terms of protecting the interests of copyright and related rights holders and in this regard, developing the practice of the Constitutional Court.⁴³ In particular, the Constitutional Court of Georgia recognized the norms to be compliant with the Constitution, which, when reproducing (copying) an audiovisual work or a work recorded on a phonogram for personal use, imposed a royalty on the manufacturers and importers of equipment and material mediums intended for the reproduction of such work.

The Constitutional Court of Georgia stressed the importance of protecting the property interests of copyright and related rights holders, noting that the recognition of authors of works of science, literature and art as authors and the protection of their economic interests are linked to important public legitimate goals. In particular, by properly protecting copyright, the state promotes innovative and creative activities, the creation, preservation and development of works of science, literature and art, as well as the establishment of a cultural identity of a society. Furthermore, performers, persons who store information on mediums and disseminate it and the entire commercial industry involved in the process, play an important role in delivering the product created by the authors to the public. Therefore, the protection of the economic interests of related rights holders is also directly linked to the development of

⁴² Judgment №1/3/1312 of the Constitutional Court of Georgia of December 18, 2020 in the case "Konstantine Gamsakhurdia v. Parliament of Georgia"

⁴³ Judgment №2/1/877 of the Constitutional Court of Georgia of 25 December 2020 in the case of "LLC Alta", "LLC OK", "LLC Zoommer Georgia", "LLC Georgian mobile import" and "LLC Smiley" v the Parliament of Georgia"

education, science and culture, promoting the creation, dissemination and making available to the public of the works of science, literature and art.

The Constitutional Court has made particularly important clarifications regarding the grounds for conducting a search in a criminal case and the evidence standard of guilty verdict.⁴⁴ In particular, the court discussed the constitutionality of the search when it was based only on information provided by an operative source or an anonymous person. However, the court deemed it a violation of privacy to consider the outcome of the search as one of the grounds for making a substantiated presumption necessary for the search.

The court stressed the special importance of the information provided by the operative source and the anonymous person in terms of fighting crime. Furthermore, it stressed the need to guarantee the confidentiality of the source of information in order to ensure important state and public interests. The court also clarified that, unlike an ordinary witness, in case of an operative source and an anonymous person, the court does not/cannot verify the authenticity of the first source of information. Consequently, using such information as a basis for a search without proper verification poses a high risk of unnecessary restriction of a person's personal space and right to communication.

The Constitutional Court noted that in order for information provided by an operative source or an anonymous person to be the basis for a search of a person, the information itself must be detailed and it must be possible to verify its credibility to some degree. For example, the reliability of information can be confirmed by the testimony of a police officer who has been warned of criminal liability for providing false information and which indicates that the source is experienced and reliable, and the information provided by it has been credible in the past as well.

The Court explained that, based on a systematic and grammatical interpretation of the law, a search based solely on information provided by an operative source or an anonymous person should be excluded, as a reasoned assumption requires at least one more piece of information or fact in order for an authorized person to have a reasonable degree of suspicion. Thus, conduct of a lawful search should not be possible solely on the basis of information provided by an operative source or an anonymous person under the Code of Criminal Procedure.

The Constitutional Court shared the plaintiff's view that if the protocol of the interview of the person compiling/receiving the report on the receipt of operative information, without providing any additional information, repeats only the information described in the report, and/or only the information provided by the operative source, it is equal to one information,

⁴⁴ Judgment №2/2/1276 of December 25, 2020 of the Constitutional Court of Georgia in the case "Giorgi Keburia v. Parliament of Georgia"

which obviously cannot be assessed as a combination of information or facts. However, there was no clear and relevant practice in the case to prove that the basis of the search was only the report of the person receiving the operative information and the interview protocol of that person repeating the information from the report and/or the operative source, without providing any additional information and/or verifying the information. Thus, the Court did not find the disputed regulation unconstitutional in this respect.

However, the Court pointed out that in the court practice of the common court, there have been cases where the outcome of a search has been the basis for substantiating the lawfulness of the search. According to the court, the fact of obtaining evidence as a result of the search is an irrelevant circumstance in verifying whether the law enforcement assessed the existence of a substantiated presumption before the search was conducted. Accordingly, the assessment of the need/necessity of a particular search is not affected by the fact that relevant evidence was obtained as a result of that search. Accordingly, the Constitutional Court of Georgia considered unconstitutional the normative content of the disputed regulation, which considers the result of the search as one of the grounds for creating a substantiated presumption necessary for the search.

In the same decision, the Constitutional Court considered passing guilty verdict based on the testimony of a law enforcement officer, which is based on the information of an operative source (confidant/informant) or provided by an anonymous person to be inconsistent with the constitutional guarantee of relying on infallible evidence of a guilty verdict.

The Court found that there had been instances in common court practice where the testimony of a police officer who receives operative information, when the latter, without giving any additional information, merely narrates the source of the operative information, had been used as one of the grounds for a guilty verdict. The Constitutional Court noted that by its content the testimony of a police officer, which is based on information provided by a source of operative information - a confidant/informant - is a form of indirect testimony that poses equal risks to the state's obligation to pass a guilty verdict based on infallible evidence. In addition, the Constitutional Court clarified that the use of such testimony by a police officer for a guilty verdict clearly puts the defense in an unequal position. The defense does not have the opportunity to directly question the person who provides operative information, to question the credibility and reliability of the person on whose testimony the court relies in passing a guilty verdict. The lack of such an opportunity for the defense obviously poses a risk that a guilty verdict will be made in the case without conclusive evidence.

The Constitutional Court also assessed the constitutionality of the use of material evidence seized as a result of a search conducted on the basis of operative information and the evidence

derived from it as the basis for a guilty verdict. Based on the analysis of the materials in the case under consideration, the Constitutional Court found that in the practice of the common courts there were cases when a guilty verdict was passed against a person based on the combination of evidence, which consisted of an item seized as a result of a search conducted on the basis of information provided by an operative source (drug or firearms), based on the consistent testimony of the coparticipants/attendees of the search, records of the search and arrest, and chemical expertise (describing the type/essence and amount of items seized).

The Court noted that the combination of the above-mentioned evidence, which forms the basis for a guilty verdict, in some cases may not meet the constitutional requirements for the veracity of the evidence provided for in Article 31(7) of the Constitution of Georgia. The state is obliged to establish a system of obtaining evidence as a result of the search, which, on the one hand, equips law enforcement officers with the ability to obtain neutral evidence to ensure the credibility of the search, and on the other hand, reduces the risk of abuse of power. When the question of the use of an item seized as a result of search as evidence depends solely on the testimony of police officers, for their credibility essential will be what led to the creation of such data. The presumption of good faith action of the police is much simpler when it is proved that, given the factual circumstances of the case, it was impossible (immeasurably difficult) to obtain additional evidence regarding the credibility of the search. However, when it becomes apparent that a police officer could have obtained evidence to substantiate the credibility of the search and he/she did not do so, the degree of confidence in his/her actions is greatly diminished.

According to the Court, given the complexity of the investigative action, in all cases, due to objective circumstances, it may not be possible to substantiate the fact of the search with neutral evidence, although it must be confirmed that the authorized person took reasonable measures for it. An obvious example of this is when the investigation of the case reveals that the possibility of the presence of a neutral witness during the search of the person or his/her property objectively existed and the police did not provide it. Moreover, modern technological progress makes it possible to video record the search process to strengthen the position of the prosecution.

In view of the above, the Constitutional Court clarifies that failure to make actual use of the available opportunities for investigation, which would confirm/substantiate the evidence against the person poses significant risks of error, arbitrariness and abuse of power in the administration of justice. Nevertheless, the current law does not impose an obligation on law enforcement officer to obtain neutral evidence to ensure the credibility of a search, even when

it is possible as a result of acting within reasonable limits without endangering the safety of the police officer and/or destroying/concealing evidence.

Thus, the Constitutional Court has ruled that legislation and the impugned norm fail to insure a person's conviction risks by using unreliable evidence. Accordingly, the normative content of the impugned norm, which allows the use of an illegal item seized as a result of a search, as evidence, if the possession of the seized item is confirmed only by the testimony of law enforcement officers and at the same time law enforcement officers could, however, did not take appropriate measures to obtain neutral evidence proving the credibility of the search, fail to meet the constitutional requirements of veracity, and are unconstitutional.

Noteworthy is the decision of the Constitutional Court,⁴⁵ based on which it was considered discrimination to differentiate administratively detained persons according to the time of detention. Different treatment was manifested in the determination of the maximum period of detention depending on whether the person was detained during working hours.

The Constitutional Court of Georgia pointed out that if the expiration of the 12-hour period for the detention of a person coincided with the non-working time of the court, the maximum period of administrative detention of the person might have been 48 hours, while in other cases the detention could not have lasted longer than 12 hours. The Court considered the comparable persons to be substantially equal and pointed out that the differentiation established by the impugned norm did not constitute a means of achieving the legitimate aim named by the defendant - the administration of justice. The court clarified that even if a person was detained for 24 hours, that period would necessarily include the court's working hours, regardless of the length of time the person was detained. Consequently, the possibility of extending the administrative detention to 48 hours could not be explained by the court's non-working hours. Thus, the disputed regulation was declared unconstitutional.

The Constitutional Court has also set important standards for restricting property rights on the grounds of economic health and consumer protection.⁴⁶ The impugned norms in the case determined prohibition of use of mortgage on immovable item owned by an individual or other individual as means of securing claim based on credit/loan agreement to be issued/issued to an individual (including individual entrepreneur) and the use of liens for certain categories of items.

⁴⁵Judgment №2/4/1412 of December 29, 2020 of the Constitutional Court of Georgia in the case "Irakli Jugheli v. Parliament of Georgia"

⁴⁶ Judgment №1/4/1380 of December 18, 2020 of the Constitutional Court of Georgia in the case "Fatman Kvaratskhelia and Kakha Ekhvaia v. Parliament of Georgia".

The Constitutional Court of Georgia has clarified that the prevention of excessive loans in the society, the health of the economy, and the maintenance of the purchasing power of the society are public interests that may be the basis for the restriction of property rights. According to the court, the massive accumulation of loan obligations of individuals can have a negative impact on the named interests. Furthermore, the Constitutional Court has clarified that creditors in the market, for the most part, enjoy the balance of asymmetric forces inherent in their position, which is due not only to their respective experience but also to their increased interest in obtaining high benefits from legal relationships. Accordingly, the Court noted that it is necessary to have mechanisms in place to balance the threat posed by such creditors.

The Constitutional Court, in view of their specificity and the risks involved, has distinguished between the use of mortgages on immovable property and the use of liens in respect of certain categories of movable property. The court noted that loans secured by real estate are, as a rule, typical of credit relations that involve taking a particularly large amount of credit liability. Consequently, repaying such a loan to the creditor can impose such a huge burden on the person that it significantly reduces his/her purchasing power and significantly impairs his/her ability to make full use of the resources at his/her disposal. According to the Constitutional Court, due to the high frequency of the above-mentioned negative consequences, not only the individual but also the public effect of the norm should be considered, as a number of public interests are at stake. In view of all the above, the Court held that the impugned norm rightly establishes a balance between private and public interests and that the restriction of the circle of lenders secured by real estate is not contrary to the right to property.

However, with regard to the use of certain categories of movable property, including vehicles as means of liens, the Constitutional Court noted that the defendant could not substantiate the high likelihood of damaging the vital interests of the borrower by transferring the named items to the creditor. Accordingly, the Constitutional Court held that in the event of a mass default of credit obligations secured by movable property specified in the impugned norm, the damage could not have been to the extent that the interest of financial stability was seriously jeopardized. In view of the above, the Constitutional Court found that the impugned norm violates the right to property.

Last year, the Constitutional Court also made a very important decision regarding the limits of legitimate expectations protected by property rights.⁴⁷ In particular, the court did not satisfy

⁴⁷ Judgement №3/4/648, 1315, 1369, 1370, 1371, 1372, 1373, 1374, 1375, 1379, 1385, 1386, 1388, 1391, 1397, 1398, 1405, 1406, 1407, 1411, 1413, 1414, 1415 of December 29, 2020 of the Constitutional Court of Georgia in the case "Levan Meskhi, Nestan Kirtadze, Tamaz Bolkvadze and others (50 plaintiffs in total) v. the Parliament of Georgia"

the claim of the former members of the Parliament of Georgia, whose monthly state compensation was reduced by GEL190 based on the impugned norm.

The Constitutional Court considered the compensation awarded to the plaintiffs to be an interest protected by the constitutional right of property, since there was a legitimate expectation under the law with regard to accepting it. The court separated the pension, which is an additional social and economic guarantee established within the framework of the goodwill shown by the state, and the pension, which is a mechanism for predetermined compensation for actions taken in favor of the state.

The Court pointed out that with regard to a number of public positions, such as a soldier or a police officer, the guarantee of a stable receipt of compensation/pension may be an important factor in encouraging them to hold this important and dangerous position, although similar requirements do not apply to holding the position of a Member of Parliament. It is unreasonable to assume that, a person would have considered receiving social assistance in a different manner in the future as an essential precondition for the exercise of the powers of a Member of Parliament, and otherwise might not have even agreed to be a Member of Parliament. Thus, the state compensation provided by the disputed law was considered by the state as a social guarantee created based on goodwill within the framework of social policy.

Furthermore, the court emphasized the scope of the legislator's particularly broad discretion in the management of economic resources and in the development of the country's socio-economic policy. However, the court clarified that the impugned norms did not reduce the plaintiffs' compensation in a way that would significantly harm their economic interests. Thus, the impugned norms were not found to be contrary to property rights.

3.2.Steps taken by the Constitutional Court to function effectively in the face of a number of restrictions caused by the new Coronavirus pandemic

In 2020, the World Health Organization declared a pandemic due to the spread of a new coronavirus (COVID-19). A number of restrictions have been imposed in Georgia to prevent the spread of the new coronavirus. All of this has had a significant impact on the possibility of conducting proceedings in the classical form, to the extent that the physical gathering of the parties in the courtroom and the conduct of oral hearings in this form carry the risk of spreading the virus.

In order not to endanger the effective exercise of constitutional control in the country and, at the same time, to maximize prevention of the risk of spreading the new coronavirus, the Plenum of the Constitutional Court amended the Rules of Procedure of the Constitutional

Court of Georgia by Resolution №127/1 of December 7, 2020, adding Articles 20¹-20⁶. The above-mentioned norms approved the rules for holding a court session remotely, including the procedure for the technical implementation of the remote sessions, the procedure of involvement of the participants in the case and other relevant issues.

Along with providing remote hearings, it should be noted that hearings held remotely are broadcast live via YouTube (youtube.com) channel of the Constitutional Court. Remote hearings are available to anyone, both during and after sessions. Access to court hearings is extremely important in terms of the transparency of the constitutional justice, especially in situations where it is impossible to physically gather people in a courtroom and at the same time pose a significant threat to life and health.

During 2020, the special importance of electronic public services was highlighted. It should be noted that in 2020, the Constitutional Court introduced an electronic case management system. The project was implemented with the financial support of the European Union. The electronic system of constitutional proceedings has made it possible for the court staff to operate smoothly and efficiently in remote mode. The case management system also ensured the electronic exchange of case materials between the participants in the proceedings, which significantly contributed to both the efficiency of the Constitutional Court and the prevention of the spread of the new coronavirus.

3.3.Appointment of members of the Constitutional Court and election of the President of the Court

In 2020, significant changes took place in the composition of the Constitutional Court of Georgia. On June 15, 2020, the 10-year term of office of Zaza Tavadze, a member of the Constitutional Court, who has been the Chairman of the Constitutional Court of Georgia since October 2016, expired. During his judicial career, Zaza Tavadze was actively involved in the development of the court practice of the Constitutional Court. With his participation, the Constitutional Court has made a number of decisions that have established important human rights standards, increased the institutional independence of the Constitutional Court itself and its authority both within the country and abroad. It should be noted that in parallel with the chairmanship of the Constitutional Court of Georgia, in 2018-2019 Zaza Tavadze also chaired the Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions. In addition to his judicial work, Zaza Tavadze has been actively involved in the Constitutional Court's educational and academic projects, national and international conferences, public lectures and other important events, including in 2016-2017 he was elected

President of the Conference of European Constitutional Courts and in 2018-2020, chaired the editorial board of the Constitutional Court Law Journal.

On June 25, 2020, on the basis of Article 10 of the Organic Law of Georgia on the Constitutional Court of Georgia, Merab Turava, a member of the Constitutional Court, was elected Chairman of the Constitutional Court of Georgia by the Plenum of the Constitutional Court of Georgia.

According to the decision №3/ok of April 3, 2020 of the Plenum of the Supreme Court of Georgia, Khvicha Kikilashvili was appointed a member of the Constitutional Court of Georgia instead of Maia Kopaleishvili, who took office as a judge after taking an oath on April 8, 2020.

Khvicha Kikilashvili served as a judge in general courts in 2006-2020, namely: Sighnaghi District Court (2006-2011), Khelvachauri District Court (2011-2013 and 2017-2019), Batumi City Court (2013-2016), and from 2019 worked in the Criminal Chamber of Tbilisi Court of Appeal. In 1994-2006 he held various positions in the Prosecutor's Office. In 1994 he graduated from the Faculty of Law of Ivane Javakhishvili Tbilisi State University.

According to Resolution №28/ok of May 29, 2020 of the Plenum of the Supreme Court of Georgia, Vasil Roinishvili was appointed a member of the Constitutional Court of Georgia instead of Zaza Tavadze, whose swearing-in ceremony was held on June 17, 2020. On June 25, 2020, Vasil Roinishvili was elected by the Plenum of the Constitutional Court of Georgia as the Deputy Chairman of the Court and the Chairman of the First Panel.

Vasil Roinishvili was a judge of the Supreme Court of Georgia in 2009-2020. He has many years of experience working in the field of law. At various times he held leading positions in the Ministry of Justice of Georgia and the General Prosecutor's Office.

It should be noted that according to Article 9(2) of the Organic Law of Georgia on the Constitutional Court of Georgia, the authority of a member of the Constitutional Court starts from the day he/she is sworn in.

4. Enforcement of the decisions of the Constitutional Court and implementation of the standards established by the decisions

The full implementation of the decisions of the Constitutional Court of Georgia and the effective implementation of the standards established by the decision are of great importance for the strengthening of constitutional legitimacy. Accordingly, this part of the document will discuss the issues identified in 2020, which are noteworthy in terms of enforcement of the decisions of the Constitutional Court of Georgia.

4.1. Postponement of annulment of the impugned norm

According to Article 60(5) of the Constitution of Georgia, the decision of the Constitutional Court is final. The decision of the Constitutional Court of Georgia is binding on any branch of government. An act declared unconstitutional or part of it loses its force from the moment the relevant decision is published by the Constitutional Court. The decision of the Constitutional Court of Georgia to declare a normative act unconstitutional is self-executing, the norm loses its force from the moment of publication of the decision and does not require additional implementation measures by other state bodies.

Moreover, in some cases, the Constitutional Court of Georgia indicates that an invalid declaration of a normative act declared unconstitutional may cause significant damage to private and public interests. In such cases, the Constitutional Court of Georgia shall declare the disputed normative act invalid not from the moment of publication of the decision, but from a specific, later date determined by the decision. The purpose of the mechanism for postponing the recognition of the impugned norm as invalid is not to leave without regulation important public relations, which are constantly in need of legal regulation. In such cases, it becomes necessary for the body adopting the unconstitutional act to take active action in order to make the relevant legislative changes within the timeframe set by the court and not to damage the relevant private and public interests as a result of the invalidation of the unconstitutional norms.

In 2019, the Constitutional Court of Georgia postponed the invalidation of an unconstitutional norm for different periods in 2 decisions and 2 judgments of preliminary hearings, whereby norms of content identical to norms recognized as unconstitutional by the Constitutional Court of Georgia (“overriding norms”) were declared invalid without their consideration on the merits. Furthermore, in 2 decisions made by the court in 2020, the mechanism of postponing the date of declaration of invalidity of the unconstitutional norm was used, for which the deadline set by the court for the implementation of the relevant changes has not yet expired.

4.1.1. Cases on which legislative changes have not been made

a) Judgment №1/1/655 of 18 April 2019 of the Constitutional Court of Georgia in the case of ““LLC SKS” v. Parliament of Georgia”

On April 18, 2019, the First Panel of the Constitutional Court of Georgia made a decision in the case of LLC “SKS v. Parliament of Georgia (Constitutional claim №655). The court considered the norm of the Law of Georgia on State Procurement to be inconsistent with the freedom of entrepreneurship, according to which the Law of Georgia on State Procurement did not apply to the state procurement of postal and courier services by LLC “Georgian Post”.

The court found that the disputed regulation put LLC “Georgian Post” in an advantageous market position compared to other economic agents. According to the Court, the legislation of Georgia (a) did not clearly define the obligation for LLC Georgian Post to provide postal and courier services at an affordable price throughout the country, (b) did not set transparent and objective parameters for calculating the economic costs of providing affordable postal and courier services throughout the country and (c) there was no rule for granting a benefit to LLC Georgian Post, which precluded the possibility of granting more benefits to it than would be necessary to reimburse the relevant economic costs and reasonable profits. As a result, the impugned norm was declared unconstitutional.

Recognition of the impugned norm as invalid was postponed until May 1, 2020, in order not to endanger the process of providing postal and courier services at affordable prices throughout the country by LLC Georgian Post and did not adversely affect the interests of postal and courier service recipients. Despite the expiration of the deadline set by the Constitutional Court, no relevant changes have been made in the legislation. The failure to order the issue in a new way may also be perceived in such a way that the Parliament of Georgia considered it expedient to extend the validity of the Law of Georgia on State Procurement to the mentioned legal relationship.

b) Judgment №1/4/693,857 of June 7, 2019 of the Constitutional Court of Georgia of in the case “Non-entrepreneurial (Non-commercial) Legal Entity “Media Development Fund” and Non-entrepreneurial (Non-commercial) Legal Entity “Institute for Development of Freedom of Information” v. Parliament of Georgia”

On June 7, 2019, the Constitutional Court of Georgia made a decision in the case “Non-entrepreneurial (Non-commercial) Legal Entity “Media Development Fund” and Non-entrepreneurial (Non-commercial) Legal Entity “Institute for Development of Freedom of Information” v. Parliament of Georgia (Constitutional claims №693 and №857) and declared the norms of the General Administrative Code of Georgia and the Law of Georgia on Personal

Data Protection unconstitutional⁴⁸, which restricted the release of public information containing personal data, and if such data belonged to a specific category of personal data, it was completely prohibited to disclose it and/or transfer it to a third party without the consent of the data subject.

According to the Constitutional Court, it was virtually impossible to obtain the full text of a court decision under the existing system, including when personal data subjects had no interest in protecting the privacy of personal information. Moreover, even in the absence of the consent of the subject of personal data, two constitutionally protected rights opposed each other, the balance between which was almost unconditionally resolved by the impugned regulation in favor of the protection of personal data. According to the Court, the initial balance established in favor of personal data is not compatible with the order of values recognized by the Constitution of Georgia.

The Constitutional Court pointed out that in case of immediate declaration of the impugned norms as invalid, there would be no reason to refuse to disclose public acts of the court in order to protect personal data, thus violating the right to privacy. Therefore, the Constitutional Court postponed the declaration of the impugned norms as invalid until May 1, 2020. It should be noted that the term set by the Constitutional Court for the Parliament of Georgia has expired, although the Parliament of Georgia has not made the relevant legislative changes in this case either.

c) Judgment №2/8/765 of December 7, 2018 of the Constitutional Court of Georgia in the case "Citizen of Georgia Davit Dzotsenidze v. Parliament of Georgia"

On December 7, 2018, the Constitutional Court of Georgia made a decision in the case "Citizen of Georgia Davit Dzotsenidze v. Parliament of Georgia" (Constitutional claim №765) and declared unconstitutional the normative content of Article 430(3) of the Civil Procedure Code of Georgia, which allowed the entry into force of a court decision on the grounds provided for in Article 423(1)(f) of the Civil Procedure Code of Georgia in relation to Article 42(1) of the Constitution of Georgia (current version valid until December 16, 2018).

The Constitutional Court noted that, in accordance with the rule established by the impugned norm, in the case of thoroughness of the application submitted due to the newly discovered circumstances, without any exceptions, the decision that had entered into legal

⁴⁸ The normative content of Article 28(1), Article 44(1) of the General Administrative Code of Georgia (current version valid until December 16, 2018), Article 5, Article 6(1) and (3) of the Law of Georgia, which excludes the issuance of the full text of court acts adopted as a result of an open court session in the form of public information, was declared unconstitutional in relation to Article 18(2) of the Constitution of Georgia.

force would be completely annulled. According to the Constitutional Court, the newly discovered evidence and circumstances may indicate the need not to completely annul the legal consequences of the decision, but only to revise part of it. The Court held that a less restrictive means would be the rule of review of the decision, which would allow the judge, in each individual case, by balancing the interests of the parties, to make a decision within the scope of the annulment of the final court decision.

Moreover, the Constitutional Court pointed out that in case the disputed normative content of Article 430(3) of the Civil Procedure Code of Georgia is declared invalid upon publication of the decision of the Constitutional Court, prior to the settlement of the issue by the Parliament of Georgia, there may have been no legal precondition for the annulment of the decision that entered into force on the grounds provided for in Article 423(f)⁴⁹ of the Civil Procedure Code of Georgia and the resumption of the proceedings. However, according to the Constitutional Court, in the presence of newly discovered circumstances, the annulment of a court decision that entered into force was, in some cases, a requirement for a fair trial. Therefore, the repeal of the impugned norm as soon as the decision of the Constitutional Court is published may have led to a violation of the right of individuals to a fair trial. In view of all the above, the declaration of the impugned norm was postponed until April 30, 2019.

Despite the expiration of the term set by the Constitutional Court for the Parliament of Georgia, the Parliament of Georgia did not make the relevant legislative changes in 2020 either. The inaction of the Parliament of Georgia should be considered especially problematic when the Constitutional Court explicitly indicates in its decision that such inaction may lead to a violation of the right to a fair trial.

4.1.2. Cases on which legislative changes have been adopted after the expiration of the term determined by the Constitutional Court of Georgia

In the case discussed below, the relevant legislative changes were made after the expiration of the term determined by the Constitutional Court.

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

On October 19, 2018, the Constitutional Court of Georgia made a decision in the case David Malania, a citizen of Georgia v. Parliament of Georgia (Constitutional claim №779) and

⁴⁹ The party became aware of the circumstances and evidence which, if previously submitted to the court during the hearing, would have led to a favorable decision for it.

declared unconstitutional the norms⁵⁰ of the Code of Administrative Offenses, according to which, the decision made by the court of the first instance in the case of some administrative offenses was final and could not be appealed.

According to the Constitutional Court, under the impugned norms, the possibility of a dispute in the Court of Appeals was excluded in the case of liability for serious offenses, including those for administrative offenses for which administrative detention was provided as a penalty, among other sanctions. According to the standard set by the court, a person liable for a serious offense should have the opportunity to appeal the decision in the Court of Appeals, regardless of whether a severe sanction has been applied to him/her. The Constitutional Court also considered the restriction of the right to appeal to the Court of Appeals to be unconstitutional in the case of any administrative offense where the practice of the courts is inconsistent. According to the Court, the inadmissibility of an appeal in a situation where courts of one instance interpret the norms differently poses a significant threat to security in rights.

According to the Constitutional Court, the impugned norms served the most important legitimate purpose of protecting the court from overload. The immediate annulment of the impugned norms may have resulted in overloading of the appellate courts. Accordingly, the notice of invalidity of the impugned norms was postponed until March 31, 2019.

On May 22, 2020, the Parliament of Georgia adopted the Law of Georgia №5927-ლს on Amendments to the Code of Administrative Offenses of Georgia. Based on this change, the preconditions for admissibility of an appeal in the Court of Appeals were determined. The named legislative change came into force on 28 May 2020. It should be noted that in this case the legislative changes were made after the expiration of the term set by the Constitutional Court (March 31, 2019).

4.1.3. Cases on which the competent bodies settled the issue within the time limit set by the Constitutional Court of Georgia and cases on which the time limit set by the Constitutional Court of Georgia has not expired

The Constitutional Court of Georgia postponed the annulment of the impugned norms in 2 judgments in 2019 (Judgment №2/12/1237 of October 24, 2019 of the Constitutional Court

⁵⁰The words of the first sentence of Article 272(1)(a) of the Code of Administrative Offenses of Georgia "whose decision is final" and the words of the second sentence "whose decision is final"; the words of sub-paragraph "c" of the same part "whose decision is final" and the words of sub-paragraph "d" "whose decision is final" were declared unconstitutional in relation to Article 42(1) of the Constitution of Georgia (version valid until December 16, 2018).

of Georgia in the case "Vasil Saganelidze v. Parliament of Georgia"; Judgment №2/16/1346 of December 17, 2019 of the Constitutional Court of Georgia in the case "Gocha Gabodze and Levan Berianidze v. Minister of Labor, Health and Social Affairs of Georgia"), where the competent bodies adopted the relevant legislative amendments within the specified period.

In addition, the Constitutional Court in 2 decisions made in 2020 postponed the repeal of norms recognized as unconstitutional. The term provided by the mentioned acts has not expired by now. These acts are:

a) Judgment №2/2/1276 of December 25, 2020 of the Constitutional Court of Georgia in the case "Giorgi Kiburia v. Parliament of Georgia" - the annulment of the impugned norm is postponed until July 1, 2021;

b) Judgment №2/4/1412 of December 29, 2020 of the Constitutional Court of Georgia in the case "Irakli Jugheli v. Parliament of Georgia - the annulment of the impugned norm is postponed until June 1, 2021.

In general, it is important that the competent authorities make every effort to adopt appropriate legislative changes within the timeframe set by the Constitutional Court of Georgia before the repeal of the norms, and to prevent significant damage to private and public interests.

5. Statistical review of the activities of the Constitutional Court of Georgia for 2020

Significant information on the activities of the Constitutional Court of Georgia, the main features of the constitutional proceedings and the constitutional legality in the country is provided by statistical information. Below is a graphic representation of the Constitutional Court's 2020 summary statistics, which outline the main areas of the Court's work in the current year.

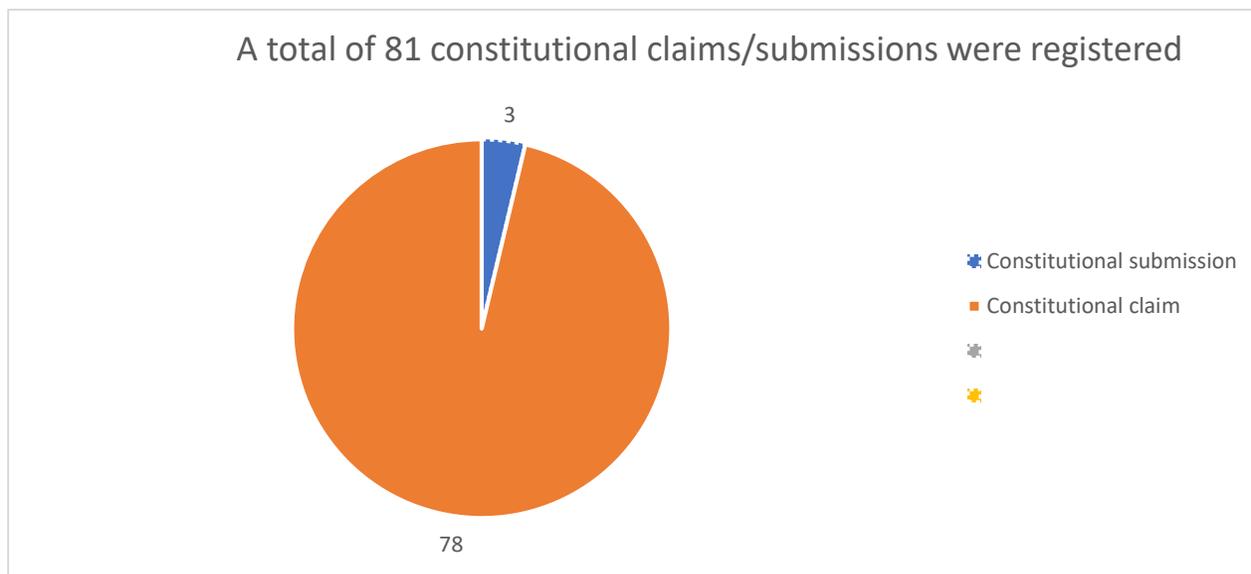
"Case", "claim" and "act"- some of the statistics relate to completed claims and completed cases. In constitutional proceedings, different constitutional claims can be combined into one case. Otherwise, the "case" may consist of several constitutional claims. The Constitutional Court Act applies to all types of acts adopted by the court – protocol records, judgments and decisions, unless otherwise specified.

"Overriding judgment" - the graphic image, in which the term "overriding" is used, refers to the case provided for in paragraph 4¹ of Article 25 of the Organic Law of Georgia on the Constitutional Court of Georgia. In particular, when the Constitutional Court, at the preliminary hearing, ruled that the impugned normative act or part thereof contained norms of the same content that the Constitutional Court had already declared unconstitutional and

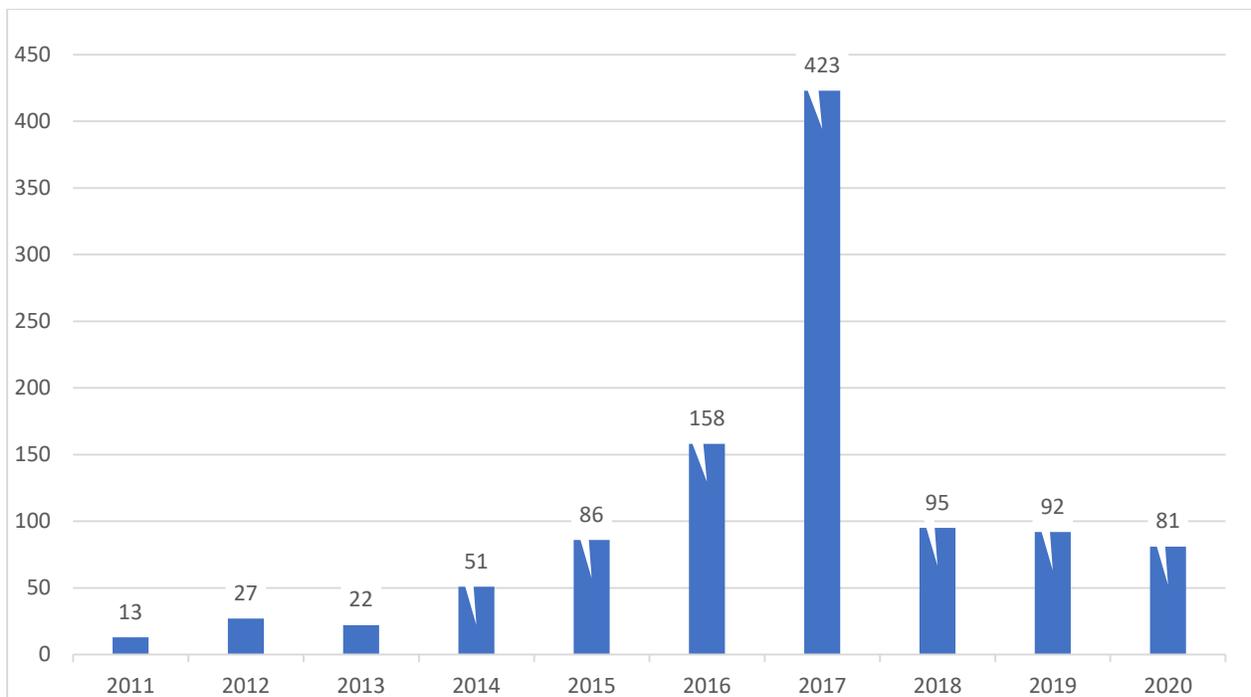
rendered a ruling on the inadmissibility of the case for consideration on the merits and the declaration of invalidity of the impugned act or part thereof.

Grounds for inadmissibility of the constitutional claim/submission for consideration on the merits – in describing column N7, this term indicates the grounds for inadmissibility of the claim/submission for substantive consideration on the grounds provided for in paragraph one of Article 31³ of the Organic Law of Georgia on the Constitutional Court of Georgia. And the term "substantiation of claim/submission" refers to the grounds provided for in sub-paragraph "a" of the same paragraph.

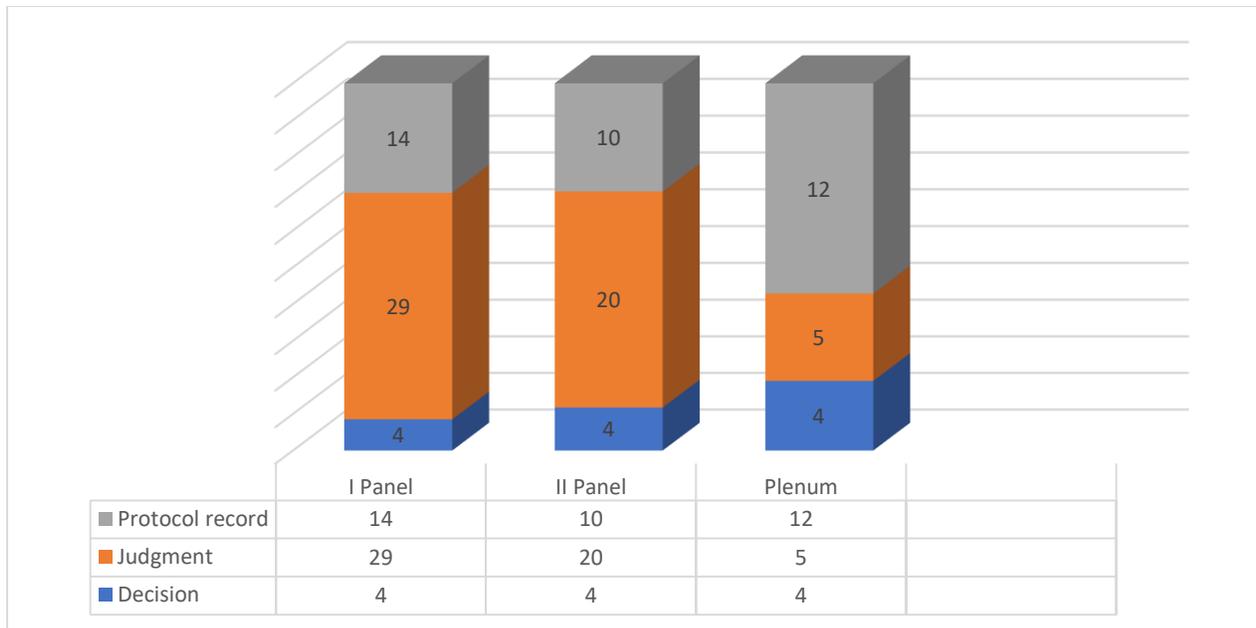
1. Number of constitutional claims and submissions registered with the Constitutional Court in 2020



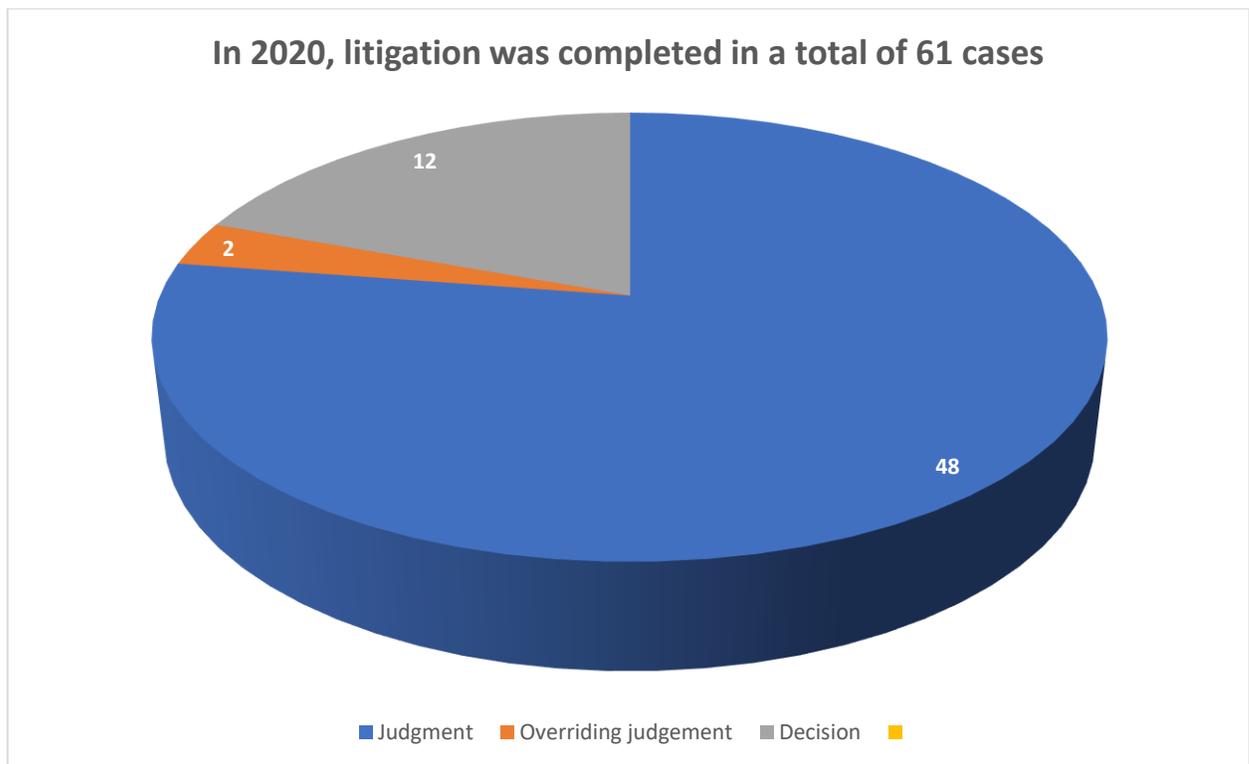
2. Number of constitutional claims and submissions registered in 2011-2020



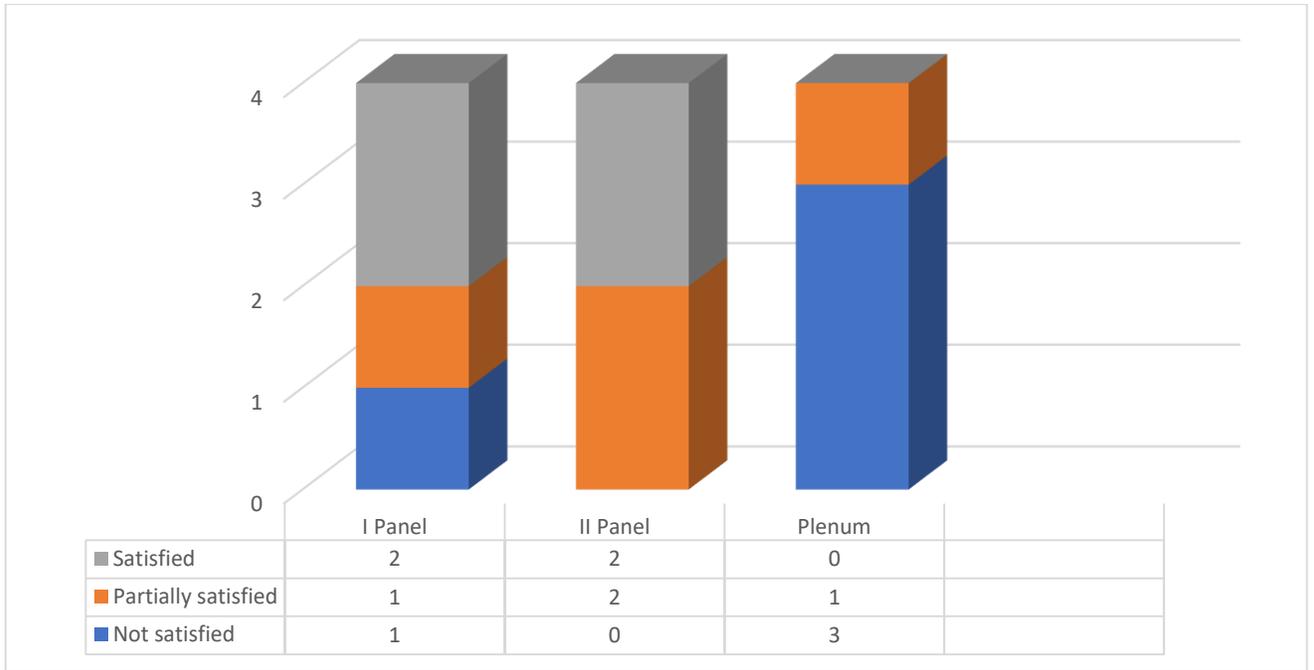
3. Acts adopted by the Constitutional Court in 2020 according to the Plenum and the Panels



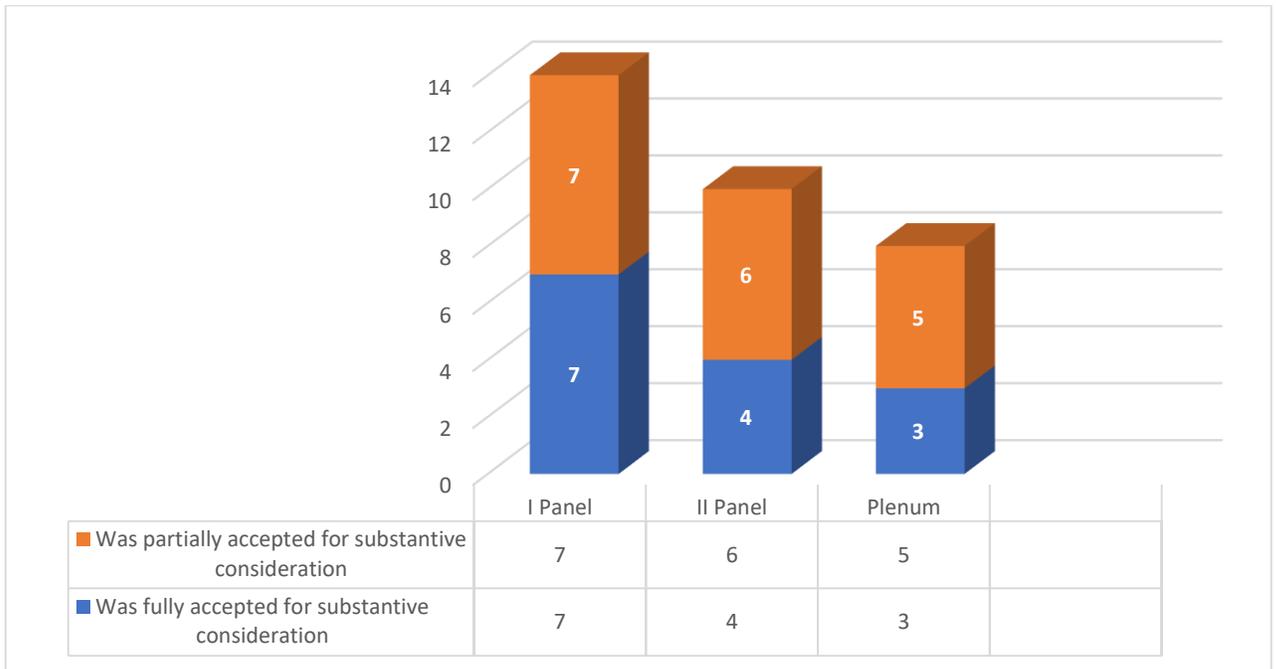
4. Number of cases completed by the Constitutional Court and their summary acts



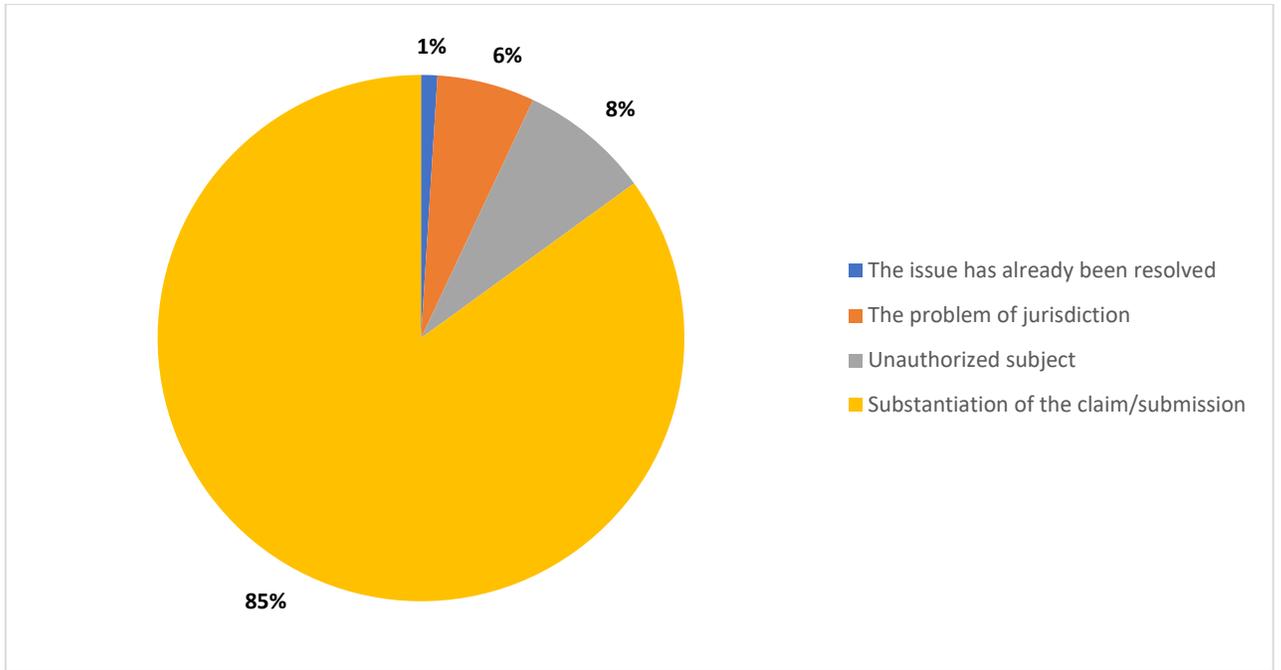
5. Results of the decisions made by the Constitutional Court in 2020 according to the Panels/Plenum



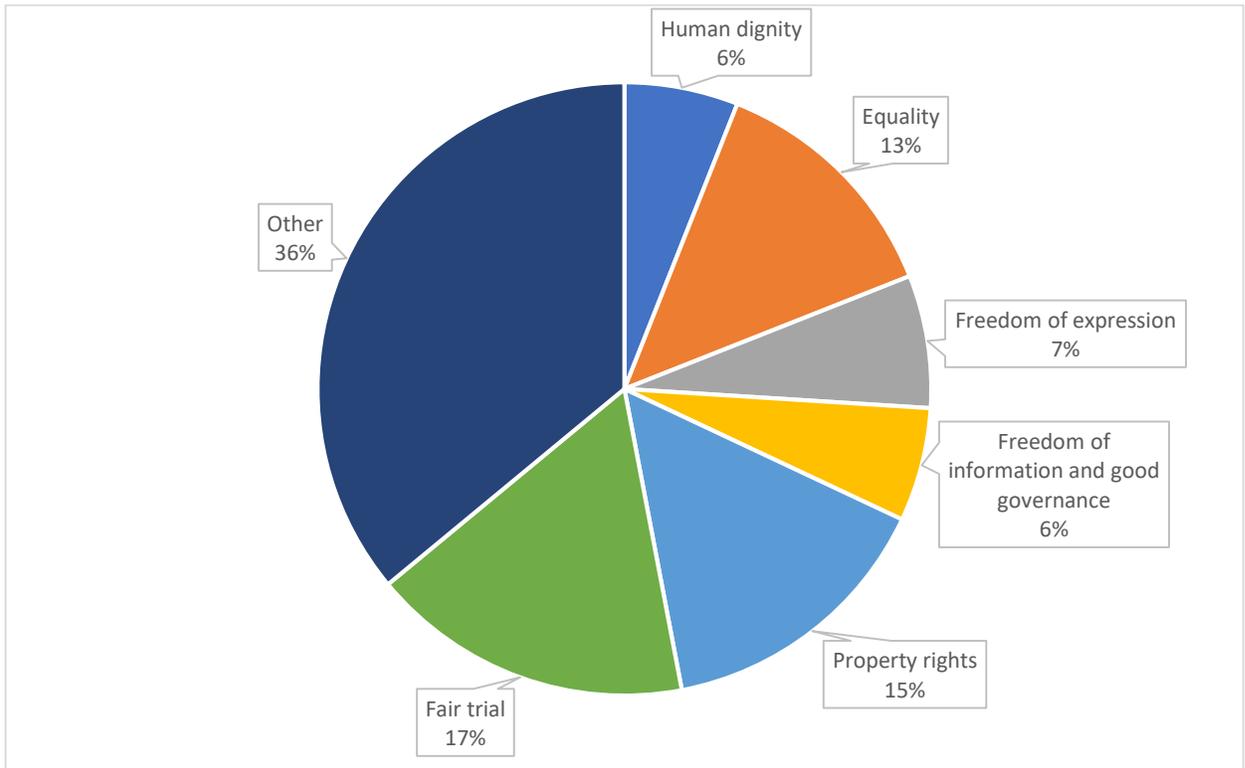
6. Results of the minutes taken by the Constitutional Court according to the Panels/Plenum



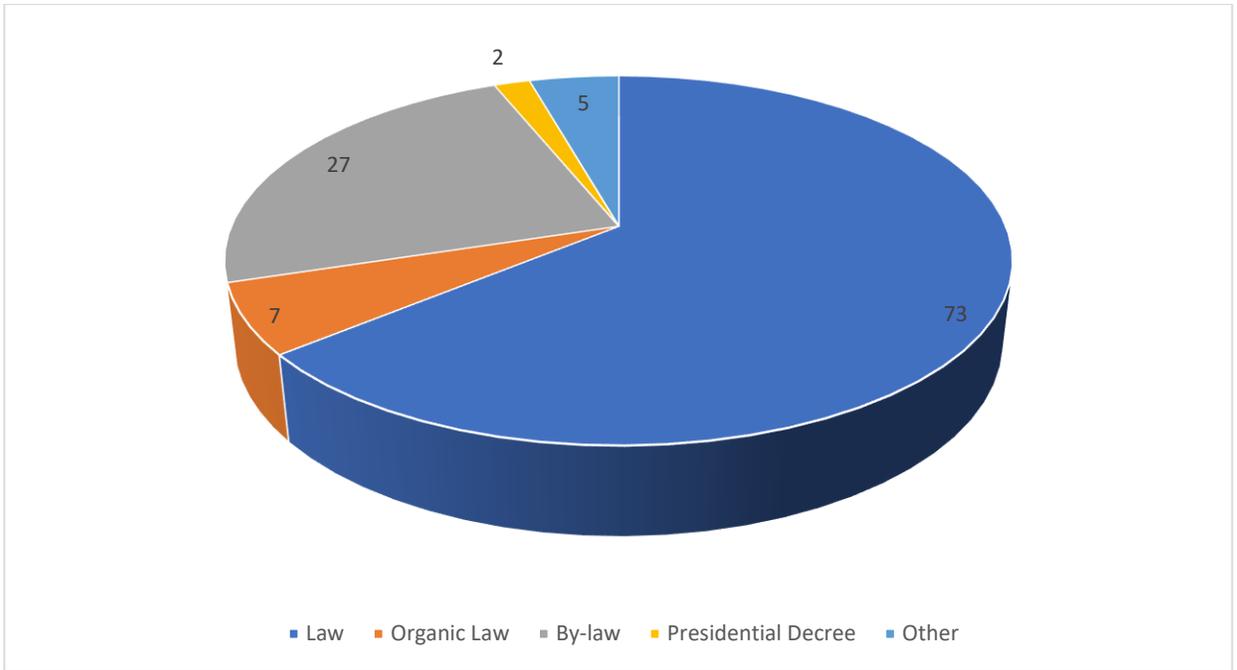
7. Grounds for inadmissibility of the case for consideration on the merits in the minutes and rulings of the Constitutional Court



8. Constitutional provisions indicated by the plaintiff in the acts adopted by the Constitutional Court in 2020



9. The disputed normative acts in the acts adopted by the Constitutional Court in 2020



10. Number of dissenting and concurrent opinions expressed by the members of the Constitutional Court

